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Consultation Document

School admissions and school admission appeals

Date of issue: **28 September 2012**

Action required: Responses by **04 January 2013**

School admissions and school admission appeals

- Overview** This consultation document seeks your views on draft Codes for School Admissions and School Admission Appeals.
- How to respond** Response forms should be e-mailed/posted to the address below by **04 January 2013**.
- Further information and related documents** Large print, Braille and alternate language versions of this document are available on request.
The consultation documents can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations
- Contact details** For further information:
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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Summary

This consultation document seeks your views on draft Codes for School Admissions and School Admission Appeals. The new Codes are intended to replace the Welsh Assembly Government's Codes on School Admissions (July 2009) and School Admission Appeals (July 2009).

The draft Codes impose requirements and offer guidance in respect of the discharge by local authorities, the governing bodies of maintained schools, admission forums and admission appeal panels of their school admissions and admission appeals functions. These bodies must "act in accordance with" the Codes.

The consultation period ends on 4 January 2013.

Responses should be sent to:

Schools Management and Effectiveness Division
Department for Education and Skills
Welsh Assembly Government
Cathays Park
Cardiff CF10 3NQ

Or completed electronically and sent to:

SchoolsManagementDivision3@wales.gsi.gov.uk

It should be noted that the responses to the consultation will be made public. Normally, the name and address (or part of the address) of the author are published along with the response. If you do not wish to be identified as the author of your response please state this expressly in your response.

Section 1: School admissions code

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Chapter 1 – Introduction

1.1 The Code is made under section 84 of the [School Standards and Framework Act 1998](#) (referred to in this Code as the [1998 Act](#)) as amended by section 40 of the [Education and Inspections Act 2006](#) (referred to in this Code as the [2006 Act](#)), which requires the Welsh Ministers to issue a Code in respect of the discharge of admissions functions by local authorities (LAs), the governing bodies of foundation and voluntary aided schools, admissions forums and admission appeal panels. Each of these bodies has a statutory duty to “act in accordance” with this Code and the School Admission Appeals Code.

1.2 This Code supersedes the previous [School Admissions Code](#) (2009) and applies to all admissions to primary and secondary schools (including sixth forms (Year 12)). It comes into force in 2013 [date to be decided] and applies to arrangements for intakes from September 2014/15 onwards. (See Annex G for details of when particular provisions come into effect.) In broad terms, for the day to day administration of admissions, the Code must be applied immediately. Where changes introduced by the Code would depend on consultation, determination and publication of admission arrangements these would be expected to be included in published arrangements for the year 2014/15 onwards. The Code is to be read alongside the School Admission Appeals Code and other guidance and legislation that affect admissions and admissions appeals in Wales.

1.3 The Code both refers to existing statutory requirements (i.e. imposed by primary or secondary legislation) and itself imposes new mandatory requirements with which those bodies listed at paragraph 1.6 below must comply. A reference to the relevant statutory provision is provided in the text or footnote as appropriate. Where mandatory requirements are imposed by this Code (or by statutory provisions) it is stated that the relevant bodies **must** comply with the particular requirement or provision. Where this Code prohibits practices, it is stated that the relevant body or bodies **must not** use this practice.

1.4 This Code also includes guidelines which the relevant bodies should follow unless they can demonstrate that they are justified in not doing so. Where guidelines refer to good practice, the Code will state that the relevant bodies **should** follow the particular guidelines. On the other hand where the guidelines refer to actions normally regarded as poor practice, the Code will state that the practice **should not** be used although there may be exceptional circumstances when it is justified.

1.5 Failure by an authority or body to comply with the mandatory provisions in this Code may result in a statutory objection (see paragraph 2.13) or complaint being made to the Welsh Ministers. Failure to follow guidelines in this Code may also lead to an objection or complaint being upheld if admission authorities are unable to justify departing from those guidelines.

1.6 The following bodies have a statutory duty to act in accordance with both this Code and the School Admissions Appeals Code:

- **Admission authorities** – LAs are the admission authorities for community and voluntary controlled schools, unless, under section 88(1)(a)(ii) of the [1998 Act](#), the function has been delegated in full to the governing body. Governing bodies are the admission authorities for foundation schools and voluntary aided schools.
- **Governing bodies** (when not admission authorities).
- **LAs** (when not acting as admission authorities).
- **Admissions forums.**
- **Admission appeal panels.**

1.7 This Code does not aim to give exhaustive guidance. Local circumstances vary widely and admission authorities are best placed to take the lead in considering, with partners in their area, how the needs of parents and children are to be met. The Code aims to build on the good practice that already exists.

1.8 The Code is primarily for those responsible for determining and implementing admission arrangements and for appeal panel members and clerks to those panels but parents and others may also find it useful.

Nursery admissions

1.9 The legislation that applies in relation to admissions to primary and secondary schools is different to that for nursery schools or to children admitted to the nursery class of a maintained school. Section 98 of the [1998 Act](#) (as amended¹) clarifies that the governing body is responsible for taking decisions about admissions to the nursery class in the case of foundation and voluntary aided schools, and in those community and voluntary controlled schools with delegated responsibility for admissions. The LA is responsible for deciding admissions to nursery classes in other community and voluntary controlled schools.

1.10 The admission authority **should** clearly identify separate admission arrangements for the nursery class. [NB: oversubscription criteria **should** be established using the same principles as those for statutory provision]. A place in a nursery class **does not** guarantee admission to the reception class. The infant class size limit applies only to classes at maintained schools containing pupils of whom the majority will attain the ages of five, six and seven during the course of the school year. Therefore, the infant class size limit will not apply to nursery classes where the majority of pupils attending that class are below the ages set out above.

Admission forums – Monitoring compliance with the Code

1.11 Admission forums **must** monitor compliance with this Code. Details on their role in this can be found at Annex D, together with the information to be included in the mandatory annual return to the Welsh Government, for monitoring purposes.

¹ [Education Act 2002](#), Schedule 4, paragraph 12 amended section 98 of the [1998 Act](#).

Chapter 2 – Setting admission arrangements

Duty to take account of parental and young peoples' preference

2.1 Admission authorities **must** make arrangements for the academic year 2014/15 and from then on to enable the parents² of children in their area and young people, in the case of sixth form admissions, to express a preference for a school and to give reasons for that preference. Where a parent or young person expresses a preference according to those arrangements, LAs and governing bodies **must** comply with that preference, subject to the exceptions set out in the [1998 Act](#)³. These can be summarised as :

- Where compliance with the preference would prejudice the provision of efficient education or the efficient use of resources (including prejudice which might arise by reason of measures required to be taken to ensure compliance with the infant class size limit).
- Where arrangements for entry to a school's sixth form are based wholly on selection by reference to ability or aptitude and compliance with the preference would be incompatible with selection under those arrangements.
- Where a child has been permanently excluded from two or more schools and the latest exclusion took place within the last two years.

Principles to be applied

2.2 In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide on the allocation of school places:

- Are clear in the sense of being free from doubt and easily understood. Arrangements that are vague only lead to uncertainty and this may reduce the ability of parents to make an informed choice for their children.
- Are objective and based on known facts. Admission authorities and governing bodies must not make subjective decisions, or use criteria which are subjective or arbitrary in nature.
- Are procedurally fair and are also equitable for all groups of children (including those with additional learning needs (ALN), disabilities, those in public care, or who may be a young carer).
- Provide parents or carers with easy access to helpful admissions information (Regulations require the LA to produce a composite prospectus that covers admission arrangements for all schools in their area. See paragraph 2.12).
- Comply with all relevant legislation and have been determined in accordance with the statutory requirements and the provisions of this Code. Failure to comply with a statutory requirement or any proposal to

² ["Parents" and "Parental Responsibility" National Assembly for Wales circular No: 12/2007.](#)

³ Sections 86, 86A, 86B, 86(3) and 87 of the [1998 Act](#).

use unlawful arrangements can be referred to the Welsh Ministers who may use powers in Part 2 of the School Standards and Organisation Act 2013 (if passed) to make a direction to enforce the statutory requirement or prevent an unlawful act.

Process to be followed

Determination year

2.3 Admission arrangements **must** be consulted on for each maintained school⁴ between 1 September and 1 March and set by 15 April of the school year (the 'determination year'⁵) beginning two years before the school year in which the arrangements will apply. The first step in the process is for the admission authority to draw up proposed arrangements in accordance with the principles outlined above. These proposed arrangements **must** then be consulted upon (except where indicated below).

Consultation

2.4 LAs **must** consult each year on the admission arrangements for those schools for which they are the admission authority. Governing bodies which are also the admission authority for a school **must** also consult annually except where they have consulted on their proposed arrangements within the previous two determination years, those arrangements are unchanged, and no objection has been made to the Welsh Ministers (or previously the National Assembly) about their admission arrangements in the preceding five years. In addition, the LA maintaining the school **must** have notified the Welsh Ministers that all the admission authorities in the relevant area⁶ undertook the required consultation in the relevant determination year.

2.5 The bodies with which admission authorities **must** consult are set out in the following table:

Admission Authority	Consultees
LAs.	<ul style="list-style-type: none"> • The governing body of the relevant schools. • All neighbouring LAs. • Admission authorities for all other maintained schools in the relevant area. • Governing bodies of all other schools in the relevant area (i.e. community and voluntary controlled schools which do not have delegated admissions powers).

⁴ Section 20 of the [1998 Act](#).

⁵ [The Education \(Determination of Admission Arrangements\) \(Wales\) Regulations 2006](#).

⁶ [The Education \(Relevant Areas for Consultation on Admission Arrangements\) Regulations 1999](#).

Admission Authority	Consultees
The governing bodies of foundation and voluntary aided primary schools and of community and voluntary controlled primary schools where responsibility for admissions has been delegated to them.	<ul style="list-style-type: none"> • The maintaining LA. • Admission authorities for all other maintained primary schools in the relevant area. • Any LA whose area adjoins the relevant area. • The governing bodies for all other primary schools in the relevant area (i.e. community and voluntary controlled schools which do not have delegated admissions powers).
The governing bodies of foundation and voluntary aided secondary schools and of community and voluntary controlled secondary schools where responsibility for admissions has been delegated to them.	<ul style="list-style-type: none"> • The maintaining LA. • Admission authorities for all other maintained schools in the relevant area. • Any LA whose area adjoins the relevant area. • Governing body for all other schools in the relevant area (i.e. community and voluntary controlled schools which do not have delegated admissions powers).

2.6 The bodies with which admission authorities **should** also consult are set out in the following table:

Admission Authority	Consultees
LAs.	<ul style="list-style-type: none"> • The admission forum serving the relevant area. • Where a significant change is proposed, parents of children likely to be affected.
The governing bodies of foundation and voluntary aided schools and of community and voluntary controlled schools where responsibility for admissions has been delegated to them.	<ul style="list-style-type: none"> • The admission forum serving the relevant area. • In the case of schools with a designated religious character, the relevant diocesan authority. • Where a significant change is proposed, parents of children likely to be affected.

2.7 Consultation **must** be in writing and **must** cover the full details of proposed admission arrangements for each school, including:

- a. Admission numbers for any age group to which children are normally admitted⁷ (the relevant age groups).
- b. Application procedures and the timetable for the admissions process;
- c. The oversubscription criteria to be used.
- d. Any separate entry requirements and oversubscription criteria for the sixth form.
- e. Arrangements and oversubscription criteria for nursery places, if applicable.
- f. Information about how waiting lists operate and how long they will be maintained, (i.e. admission authorities **must** maintain them until the 30 September in the year of entry and beyond that at the admission authorities' discretion).
- g. Information about handling of late applications (i.e. those which miss the deadline) and the making and processing of applications outside the normal admissions round (see paragraph 3.14 to 3.20).
- h. Details of how parents will be notified of admissions decisions and can take up their right of appeal.
- i. In the case of a school with pre-existing partially selective arrangements⁸ the manner in which partially selective arrangements operate.
- j. Information about any provision made for pupil banding.
- k. Catchment area maps (where appropriate).

2.8 Consultation **must not** start before the beginning of the determination year (1 September) and **must** be completed by 1 March of that academic year.

Admission number

2.9 When determining the number of pupils to be admitted to a relevant age group, admission authorities **must** have regard to the 'indicated admission number' for that relevant year group. The indicated admission number is the number calculated in accordance with the capacity assessment method set out in the guidance document '[Measuring the capacity of schools in Wales](#)'. This guidance is available on the Welsh Government's website at www.wales.gov.uk.

Determination of arrangements

2.10 Once consultation has been completed, admission authorities **must** determine their admission arrangements either in their original form or with such modifications as the authority think fit by 15 April in the determination year. They **must** then notify in writing within 14 days all those with whom they consulted (or would have consulted had the exception outlined in paragraph 2.4 not applied) on their determined arrangements.

⁷ As defined by section 142 of the [1998 Act](#).

⁸ As defined by section 100 of the [1998 Act](#).

Publication of arrangements

2.11 Where the admission authority has determined an admission number for a relevant age group which is lower than the current indicated admission number, identified through the capacity assessment process, for that age group or where admission arrangements provide for selection of pupils by ability, these **must** be published in a local newspaper within 14 days of the determination. The details published **must** include an explanation of parents' right to object to the Welsh Ministers about such selection arrangements or lower admission number. The admission authority **should** consult parents and other interested parties about the intention to determine a lower number.

2.12 Each LA **must** publish an annual composite prospectus which sets out the determined admission arrangements (including a timetable for the admissions process which sets out the relevant dates for the receipt and determination of applications and for the receipt of appeals) for **every** maintained school within its area⁹ and ensure that up to date arrangements are included. This prospectus **must** be published by 1 October in the school year immediately preceding the school year to which the admission arrangements will apply and no later than six weeks before the date by which parents may express a preference. Local authorities **must** set a reasonable date by which admission authorities other than LAs **must** ensure that they supply their relevant LA with a copy of their admission arrangements to allow the LA to comply with these publication requirements.

Objections to arrangements

2.13 If the bodies listed as consultees in paragraph 2.5 wish to object to the determined admission arrangements they **must** do so in writing to the Welsh Ministers within six weeks of the date on which they were notified that the arrangements had been determined¹⁰. Later objections will only be considered if the Welsh Ministers are satisfied that it was not reasonably practicable for the objection to have been received earlier than the time it was received.

2.14 However, the governing body of a community or voluntary controlled school (which does not have delegated admissions powers) may not make an objection to:

- The admission arrangements for any other community or voluntary controlled school in the relevant area for whom the LA are the admission authority, or
- The admission arrangements for the school for which they are the governing body, unless the objection relates to the determination of an admission number for that school (see paragraph 2.9).

2.15 Objections can not be made if the substance of the objection is to seek an alteration to the admission arrangements which can only be made by way of publishing statutory proposals, for example, the introduction of pupil banding or single sex admissions.

⁹ [The School Information \(Wales\) Regulations 2011.](#)

¹⁰ [Education \(Objections to Admission Arrangements\) \(Wales\) Regulations 2006.](#)

Parental objections

2.16 Parents who are eligible to object (see paragraph 2.18) may do so in the case of 'pre-existing' selection arrangements, i.e. arrangements for selection by ability which have been in place since the beginning of the 1997/98 school year. This right of objection does not however, apply to pupil banding or admissions to sixth forms.

2.17 Eligible parents may also object to a proposed admission number for any year group which is set lower than that indicated by the capacity assessment method set out in the guidance document ['Measuring the capacity of schools in Wales'](#) (see paragraph 2.9).

2.18 To be eligible to object to pre-existing selection arrangements a parent **must** be resident in the relevant area for the school and have a child of compulsory school age in primary education. To be eligible to object to a proposed admission number, a parent **must** be resident in the relevant area for the school and have a child who is aged between 2 and 5 years or who is of compulsory school age receiving primary education. An objection may only be determined by the Welsh Ministers if five or more parents make the same or substantially the same objection to the same admission arrangements.

Variation to determined arrangements

2.19 Once admission arrangements have been determined for an academic year they may only be varied where:

- a. There has been a major change of circumstances (e.g. a fire which has destroyed classroom space).
- b. A genuine error, omission or misprint has occurred in the determined arrangements.
- c. An admission authority has been made aware of the inclusion of unlawful practices in its admission arrangements.
- d. An admission authority sees a need to revise its admission arrangements in the light of a Welsh Ministers determination in relation to another school with the same or substantially the same admission arrangements.
- e. It is necessary to vary the determined admission number, catchment areas or ordering of oversubscription criteria to implement approved statutory proposals published under section 28 or 29 of the [1998 Act](#)¹¹.
- f. Published oversubscription criteria are not compliant with the statutory provisions of this Code.

2.20 In the case of a, b and c above, the admission authority must first notify the proposed variation to the consultees listed in paragraph 2.5 above and then refer the matter to the Welsh Ministers for determination. This process is not required in relation to point e and f¹².

¹¹ [The Education \(Variation of Admission Arrangements\) \(Wales\) Regulations 2006](#).

¹² Points e and f are subject to amendment Regulations.

Admission arrangements for new schools

2.21 [The New School \(Admissions\) \(Wales\) Regulations 2006](#) set out the process by which the initial arrangements for admission to new schools should be determined. These arrangements **should** be made in accordance with the principles, requirements and guidance found in this Code.

Common dates of return and common dates of offer issue

2.22 In order to ensure consistency between admission authorities and avoid confusion on the part of parents, all admission authorities in any LA area **must** have common dates of return for primary applications and secondary applications for the normal year of entry, different common dates may be agreed for primary and secondary applications. Admission authorities **must** send out decision letters on dates agreed with all admission authorities in the area. Admission authorities should consult neighbouring authorities through their admission forum to agree common dates.

2.23 Wherever possible, all admission authorities **should** agree that offer letters for secondary school applications **should** be made on the same Secondary Offer Day i.e. **1 March or the next working day**. For primary school applications, wherever possible all admission authorities **should** agree that all offers should be made on the same Primary Offer Day i.e. **16 April or the next working day**.

Content of the arrangements

2.24 All maintained schools in Wales (including schools with a designated religious character), that have enough places available **must** offer a place to every child who has applied (except where they are twice excluded, see paragraphs 3.54 to 3.56). However, some schools will have more applicants than places. Admission authorities **must** therefore have in place, as part of their admissions arrangements, criteria to determine the allocation of places in the event of oversubscription. Authorities **must** ensure these criteria are reasonable, clear, objective, procedurally fair, and comply with current legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly a child from a particular social or racial group, or a child with special educational needs. It **must** be clear in which order oversubscription criteria will be applied. Admission arrangements **must** include an effective, clear and fair tie-breaker for occasions when it is necessary to distinguish between applicants when the criterion are used. The criteria **must not** require any 'interpretation' and **must** be clear and unambiguous.

2.25 This chapter prohibits the use of oversubscription criteria that are unfair or undesirable. It also provides guidelines and examples of good practice for admission authorities to help them set criteria that are fair to all children and their families.

2.26 The most common oversubscription criteria are covered in this chapter but it is not practicable to provide an exhaustive list of what is good practice and what is not. For example, there may be criteria not mentioned here that are also unfair and should not feature in a school's admission arrangements. It is possible for a criterion

to be fair in some circumstances and not in others, as in the case of the sibling criterion. It is for admission authorities, acting in accordance with the provisions and guidelines in this Code, to decide which criteria they will use and in what circumstances.

Prohibition of undesirable oversubscription criteria

2.27 In setting oversubscription criteria admission authorities **must not**:

- Place any conditions on the consideration of any application other than those relevant to the oversubscription criteria published in their admission arrangements.
- Adopt criteria which select pupils on the basis of ability or aptitude (except in relation to school sixth forms)¹³ except schools with partially selective arrangements which already had such arrangements in place at the beginning of the 1997/98 school year and are permitted to continue to use selection by ability. There is only one school in Wales with partially selective arrangements. The general prohibition on ability based criteria includes, in the case of Welsh medium schools, the ability to speak Welsh.
- Give higher priority to children whose parents are more able or willing to support the ethos of the school or to support the school financially or in some other way.
- Give higher priority to children according to the background or status of parents, including marital status or sexual orientation.
- Take account of reports about past behaviour, attitude or achievement.
- Discriminate against or disadvantage children with ALN or disabilities.
- Allocate places at a school on the basis that a sibling or other relative is a former pupil.
- Take account of the behaviour of other members of a child's family, whether good or bad, including a good or bad attendance record.
- Give priority to children whose parents are current or former staff or governors or who have another connection to the school.
- Give priority to children who (or whose parents) have particular interests, specialist knowledge or hobbies.
- Give priority to children based on the order in which applications were received.
- Expressly exclude applicants from a particular social or religious group.
- State that **only** applicants from a particular social or religious group will be considered for admission.
- Give priority to children based on religious faith except where the school has been designated¹⁴ as having a religious character (Equality Act 2010).
- Allocate places on the basis of chronological age.

¹³ Except in relation to school sixth forms and banding the [1998 Act](#) made it unlawful for any school to adopt selection by ability as a means of allocating places. Section 39 of the [2006 Act](#) reaffirms the position.

¹⁴ [The Designation of Schools Having a Religious Character \(Wales\) Order 2007](#).

- In the case of application to a reception class, give priority to children who have attended the school's nursery class or co-located children's centre (see paragraph 2.57).
- Make admission to a school conditional on parents signing a home-school agreement¹⁵. (Schools must not ask parents to sign agreements before they have been offered a place at the school).
- Random allocation e.g. lottery.

Guidelines on setting fair oversubscription criteria

2.28 Looked after children (children in public care)¹⁶ and previously looked after children (see paragraph 3.21) are among the most vulnerable children in society. As set out in the [Placement of Children \(Wales\) Regulations 2007](#) and [Towards a Stable Life and a Brighter Future Guidance](#) which came into force in July 2007, it is of paramount importance that a school place is found as quickly as possible, that is in the best interests of the child.

2.29 For the purposes of setting and administering oversubscription criteria a looked after child is a child who is looked after by a LA in Wales or England in accordance with the [Children Act 1989](#)¹⁷ and whom the LA has confirmed will be looked after at the time of child's admission to the school. Subject to the exceptions in paragraphs 2.30 to 2.32 all admission authorities **must** give highest priority in their oversubscription criteria to looked after children and previously looked after children as required by the [Education \(Admission of Looked After Children\) \(Wales\) Regulations 2009](#) [to be amended] and as required by this Code.

2.30 Admission authorities for schools with a designated religious character (faith schools) may give first priority to all looked after children and previously looked after children, whether or not of the faith but **must** give first priority to looked after children and previously looked after children of their faith above any other children of their faith. If they give first priority to looked after children and previously looked after children of the faith, then they must give a higher priority to looked after children and previously looked after children not of the faith than other children not of that faith.

2.31 Admission authorities for schools which have provision for selection by ability **must** give higher priority to looked after children and previously looked after children who have been selected by ability over other children who have been selected by ability. Looked after children and previously looked after children who have not been allocated a place on the basis of ability **must** be given priority over other children who have not been allocated a place on that basis.

2.32 Admission authorities for schools which make provision for selection by banding **must** give priority to looked after children and previously looked after children within each band over another child who is eligible for a school place within that band.

¹⁵ Section 111 of the [1998 Act](#).

¹⁶ This means a child who is looked after by a LA in Wales or England in accordance with section 22 of the [Children Act 1989](#).

¹⁷ Section 22 of the [Children Act 1989](#).

2.33 The remaining criteria listed below, are not preferred criteria but rather those most commonly used. Guidance is provided on the circumstances in which their use will be acceptable and when it would not. It is for admission authorities to decide the order of and whether any or all of these criteria are appropriate in their local circumstances, but where this Code states that, in particular circumstances, a criterion **should not** be used, admission authorities must be prepared to justify their decision to use the criterion if an objection is made to the Welsh Ministers.

Siblings of pupils still at the school

2.34 Giving priority to children who have siblings who will be at the school when they join may support parents of young children. Admission authorities **should** give consideration particularly to the needs of younger children at primary schools, where parents may have problems with transporting children placed at different schools. Admission authorities **should** also consider carefully how twins or triplets or other relatives, including those adopted, living permanently in the household will be treated if a sibling criterion is adopted .

2.35 If using a sibling criterion, admission authorities should bear in mind that different ethnic and social groups may understand terms such as “sibling” in different ways. Admission authorities should make clear the position of other children living in the same household and define terms used such as step-children, and once defined **must** use the same definition consistently.

Multiple birth children (e.g. twins or triplets)

2.36 Particular difficulties may occur if schools can admit a child but not his or her siblings, and parents may be deterred by the prospect of taking children to two or more schools. Admission authorities **should** consider how they will treat multiple birth children when prioritising applications. If necessary appropriate over-subscription criteria should be included in published admission arrangements. For example, “if it is not possible to offer all children a place in the same school, parents will be asked to decide which child should be offered a place first or parents may wish to consider an alternative setting for all children”.

Medical need

2.37 Admission authorities may give higher priority to children or families where there is a medical need (for example where one or both parents or the child has a disability that may make travel to a school further away more difficult).

2.38 If using this criterion, admission authorities **must** give a clear explanation of what supporting evidence will be required - for example a letter from a registered health professional such as a doctor or social worker - and how this will be assessed objectively. It should be made clear that the supporting evidence should set out the particular reasons why the school in question is the most suitable school and the difficulties that would be caused if the child had to attend another school. Admission authorities **must not** give higher priority to children under this criterion if the required documents have not been produced.

2.39 This criterion, if used, **must not** relate to particular aptitudes for some subjects such as in sport or music. For example, schools **must not** seek to admit children, under this criterion, on the basis e.g. that they 'need' to attend the school because they have an aptitude or interest in sport and the school has particularly good sports facilities.

Faith-based oversubscription criteria

2.40 Schools designated as having a religious character may give preference in their admission arrangements to members of a particular faith or denomination, providing this does not conflict with other legislation, such as equality legislation or the mandatory provisions of this Code. As with all other maintained schools faith schools **must not** keep open places if they have insufficient applicants of their own faith and other families have applied for a place at the school.

2.41 As with all oversubscription criteria, those that are faith-based **must** be objective and transparent. Parents and families **must** be able to understand easily how the criteria will be satisfied.

2.42 Where preference is to be given to members of a particular faith, published admission arrangements **must** make clear how religious affiliation or commitment is to be demonstrated - for example by a simple statement of affiliation, or through a reference signed by the family's priest, minister, or other representative(s) of the church (any reference **should** be in writing). Where reference is made to the frequency of attendance at worship, the definition should be specific and refer, for example to 'weekly worship' rather than 'regular worship'. It also needs to be made clear whether any requirement is to be met by the parents (or one parent if only one parent is an adherent of the particular faith) or by the child or both.

Guidance provided by church or religious authorities

2.43 Church or religious authorities may provide guidance for the admission authorities of schools of their faith that sets out what process and criteria may be used to establish membership of the faith. Such guidance should clearly define the terms used and how membership is to be determined, and **must** be consistent with the provisions and guidelines of this Code. Where such guidance is produced, the admissions authorities for schools of the faith **should** follow it.

2.44 Admission authorities for faith schools **should** consider how their particular admission arrangements impact on the local community. Faith schools can contribute to community cohesion by having admission arrangements that are inclusive of other faiths and of all elements of the population of their local area.

2.45 Faith schools, as a minimum, **must** give first priority in their oversubscription criteria to looked after children and previously looked after children of their faith (see paragraph 2.30).

Distance between home and school

2.46 Distance between home and school is a clear and objective oversubscription criterion and is useful as a tie-breaker. Where an admission authority determines to use the distance between home and school as part of oversubscription criteria it **should** explain clearly how safe walking distance from home to the school will be measured including the points at the school and the child's home from which distance is to be measured (for example, the main school gate, the front door to the home, how flats will be treated) and care should be taken to use a reliable and reasonable system which parents can readily understand. Reference to 'straight line' and 'how the crow flies' **should not** be used as measures of distance.

2.47 Consideration may be given to the inclusion of the following measurement criteria 'furthest from and nearest to the next appropriate alternative school'. This may be useful where the pattern of school provision might lead to some children having to travel excessive distances to access a school place.

2.48 Where a child lives with parents with shared responsibility, each for part of a week, the oversubscription criteria need to make clear how the 'home' address will be decided in a fair and considered way.

Catchment areas

2.49 The 1997 Rotherham Judgment¹⁸ confirmed that there is nothing unlawful in the principle of admission authorities operating catchment areas as part of their oversubscription criteria and thereby giving priority to local children whose parents have expressed a preference for the school. However, admission authorities **should not** guarantee places to parents in a local catchment area, in case the number of in-catchment applications in any one year cannot be accommodated.

2.50 LAs **must not** suggest that parents should express a preference for the school in whose catchment area they live, or that they have been allocated a place at that school before they have expressed a preference. Although they **should** explain the possible consequences of not doing so, LAs **must** make it clear that parents are allowed to express a preference for any school they choose.

2.51 For children of UK Service personnel, admission authorities **must** treat a family moving to their area as meeting the residency criteria for the relevant school catchment area once proof of the posting has been provided, even if no address is currently established in that area.

2.52 Where catchment areas are used, they should be designed so they are reasonable and clearly defined. Use of historic/traditional or LA boundaries is not always appropriate. Admission authorities **must** make maps of the areas available, for example on their websites or in public libraries. Catchment areas **must not** be set or changed after applications have been made. There is nothing to prevent parents expressing a preference for a school if they live outside its catchment area.

¹⁸ R v Rotherham Metropolitan Council ex parte Clark and others (1997) EWCA Civ 2768.

Additional guidelines relating to primary schools

2.53 If a primary school has more than one year of entry (for example where a separate infant school feeds into a primary school junior department) separate arrangements **must** be determined for each of the years of entry.

Admission of children below the age of normal entry to school (nursery)

2.54 Local authorities in Wales are under a duty to secure sufficient provision of nursery places for their area for children in the term following their third birthday. When determining and publishing the arrangements for admission to a reception class, the admission authority **must** make it clear that:

- The arrangements do not apply to those being admitted for nursery education including nursery provision delivered in a co-located children's centre.
- Parents of children who are admitted for nursery education will still need to apply for a place at the school if they want their child to transfer to the reception class.
- Attendance at the nursery or co-located children's centre does not guarantee admission to the school.
- Parents can request that the date their child is admitted to the school is deferred until later in the school year or until the child reaches compulsory school age in that school year, see paragraph 2.58 below.

Primary schools with attached nursery class

2.55 Where schools admit nursery pupils, arrangements for their admission **must** be separately identified and published. The provisions in this Code only apply to nursery admissions to the extent set out in paragraphs 1.9 to 1.10 and in this and paragraphs 2.56 and 2.57. Published admission arrangements **must** make it clear to parents that their child's attendance at the nursery class does not guarantee admission to the school for primary education, and that a separate application **must** be made for transfer from nursery to primary school (as it **must** for transfers from infant to junior schools).

2.56 Nursery provision can be in a maintained or non-maintained setting. Admission authorities must ensure that parents are aware of the formal process for applying for a place¹⁹ and the practice of registering a child's name at a specific school should be discouraged. There is no role for headteachers in the allocation of places as this is the responsibility of the admission authority. In areas where nursery applications are in excess of the number of places available, admission authorities should apply fair oversubscription criteria in order to allocate the places.

2.57 Admission authorities **must not** include attendance at the nursery or the co-located children's centre for nursery education in their oversubscription criteria. Such arrangements can advantage those parents willing to travel a substantial distance to allow their child to attend nursery school so that they will have priority in admission to

¹⁹ [Education Act 2002](#), Schedule 4, paragraph 12 amended section 98 of the [1998 Act](#).

the primary school over more local parents. Such criteria may also disadvantage families who have recently moved to the area and those who have opted for other providers or who choose to take up the free entitlement at an alternative local provider. It may make some parents feel they have to enrol their child at the school before they consider him or her ready, in order to gain a place at the primary school.

Deferred entry to primary schools

2.58 The law does not require a child to start school until the start of the term following the child's fifth birthday. Where the admission authority for a primary school offers places in reception classes to parents before their children are of compulsory school age, they **must** allow parents the option of deferring their child's entry until later in the same school year. The effect is that the place is held for that child and is not available to be offered to another child. The parent would not however be able to defer entry beyond the beginning of the term after the child's fifth birthday, nor beyond the academic year for which the original application was accepted. This **must** be made clear in the admission arrangements for the school.

2.59 Where there are separate but 'paired' infant and junior schools, published arrangements must make it clear that parents of children at the infant school will need to apply for places at the junior school and that attendance at the infant school does not guarantee a place at the junior school.

Additional guidelines for secondary schools

2.60 The use of named feeder primary schools as an oversubscription criterion can allow better continuity for pupils but needs to be used with caution. Admission authorities **should** ensure that such arrangements do not unduly disadvantage children who move into an area at a late stage and consider carefully the impact that such arrangements have on the ability of a school to serve its immediate local area.

Sixth form admission arrangements

2.61 If an admission authority wishes to adopt specific arrangements for admissions to a school sixth form, including a separate admission number, it **must** consult on, determine and publish those arrangements at the same time and in the same way as all other admission arrangements.

2.62 Applications for admission/entry to a sixth form may be made by either the parent or the young person or both. These applications **must** be treated in the same way as any other application for admission to a school.

2.63 Admission authorities are permitted to set arrangements for entry to sixth forms which are wholly based on selection by reference to ability and where such arrangements exist, the duty to comply with that preference does not apply²⁰. This means that a young person can be refused a place even if the year group is not full. However, before setting criteria for transfer or admission to the sixth form which are based on ability, admission authorities **should** take into account the needs of the

²⁰ Section 86(3A) and (3B) of [1998 Act](#).

young person and the provision of suitable post compulsory education available in the area that a young person would have access to if they failed to meet the criteria.

2.64 Admission authorities may establish a set of oversubscription criteria for entry to sixth forms which differ from the oversubscription criteria applied in the case of younger year groups. These criteria might include selection by ability. If selection arrangements are adopted, the minimum requirements should be fully identified (for example, where entry is dependent on applicants having achieved 5 GCSEs at Grade C or above, this **must** be clearly set out). Such arrangements **should** also include information on how applicants will be prioritised if there are more applications than sixth form places available. These would only need to be used where there are more applications than places.

2.65 To enable the effective application of sixth form oversubscription criteria, admission authorities need to publish a separate sixth form admission number calculated using the '[Measuring the capacity of schools in Wales](#)' formula. Unless this is done the relevant admission number would be the admission number which applies at Year 7 which is likely to be too high.

2.66 Any admission authority which sets wholly selective sixth form admission arrangements **must** apply those arrangements equally to both young people who are currently attending the same school but seeking entry to the sixth form and those who are applying to be admitted to the school for the first time. In all other instances young people who are already attending the school will not need to apply for entry to the sixth form and cannot be refused entry.

2.67 Schools **must not** interview young people or their families for entry to a sixth form, although meetings can be held to provide advice on options and entry requirements for particular courses. Entry **must not** be dependent on attendance, behaviour record, or perceptions of attitude or motivation.

Chapter 3 – Applying admission arrangements

3.1 All admission authorities **must** consider and decide on applications for school places in accordance with their published arrangements.

3.2 If a school is oversubscribed then the admission authority **must** consider all applicants against its published oversubscription criteria (except looked after children, and previously looked after children or children with a statement of SEN).

3.3 Wherever possible all applications for admissions, **should** be returned to the admission authority rather than to a school.

3.4 In a normal year of entry, a child **must not** be refused admission to a school on the grounds of prejudice to efficient education or the efficient use of resources except where the number of applications for admission exceeds the admission number²¹.

3.5 The admission number reflects the school's ability to accommodate pupils it **should not** routinely be exceeded. However, on occasions it may be reasonable for the admission authority to consider exercising discretion to admit more pupils than the admission number indicates. Such instances might include:

- Where there are a significant number of surplus places in the year groups above (and possibly below) the year group for which an application has been made, so that the pupil can be accommodated without prejudicing future intakes if the increased uptake of places continues.
- If there is a temporary shortage of a particular type of provision in an area, for example Welsh medium education, while additional provision is being established.

3.6 It would not be appropriate to exceed the admission number of a school as described above where there are places available at a suitable alternative school which is within a reasonable travelling distance of a child's home.

3.7 It is important to note the difference between class size legislation and admission numbers. Class size legislation should not be confused with the admission number for a school. If the admission number is lower, or higher than 30, pupils should be admitted up to the admission number, as this reflects the school's capacity to admit children in the relevant age group. The infant class size limit of 30 applies to the organisation of the classes not to the number of children to be admitted.

3.8 When considering applications to years other than the normal year of entry, (i.e. reception or year 7) admission authorities **should** admit to the school's admission number and will rarely be able to prove prejudice as a ground for refusing an additional pupil while numbers remain below the admission number. However, as the admission number reflects the school's ability to accommodate pupils, it **should**

²¹ Section 86(5) of the [1998 Act](#) as substituted by section 47 of the [Education Act 2002](#).

not be exceeded to any significant degree in relation to any year group. If an admission number is routinely exceeded overcrowding could result.

Application forms

3.9 All applications for admission **must** be made by means of a completed application form whether hard copy or electronic. The information requested **must** be the same on both forms and treated in the same way when submitted. This includes applications made on behalf of a looked after child by a corporate parent where the LA is both the corporate parent and the admission authority. Admission authorities **must** ensure that an application form is produced for each of the schools for which they are responsible. These forms may relate to just one school or to a group of schools. Each form **must** include the deadline by which it is to be returned (i.e. the common date of return) together with the name and address of the person to whom it should be sent. They **should** ask for the following information (a model form is provided at Annex F):

- The child's or young person's full name, date of birth and place of residence (as this may differ from the parent's address).
- The child's or young person's sex (where authorities have single sex secondary schools).
- Whether the child is a 'looked after child' (child in care) or previously looked after child.
- Whether the child has a statement of SEN which includes a named school.
- The young person's or parent's preferred school/s (in order of preference).
- The name/s and dates of birth of older children already in attendance at the preferred school/s (where sibling links are an oversubscription criterion).
- The young person's or child's current school (where feeder schools are a criterion).
- The young person's or parent's signature, printed name, correspondence address and telephone number.
- Over-riding medical reasons for admission with supporting evidence (where medical reasons are an oversubscription criterion).

3.10 To avoid the potential for discrimination, additional information on matters which are not directly relevant to the published oversubscription criteria **should not** be sought.

3.11 Admission authorities should also consider providing the following information on application forms:

- That the child/young person on behalf of whom a preference has been expressed will be given priority and that failure to express a preference/submit a form will make it less likely that the child/young person will be able to attend a school of his/her or his/her parent's choice.

- That attendance at a nursery class within a primary or infant school does not guarantee a place in the school's reception class and that an application form must be submitted.
- That all first preferences will be met except where the number of applications exceeds the number of places available and that in such cases places will be allocated on the basis of the published oversubscription criteria.
- The authority's oversubscription criteria.
- A number to contact in the event that parents/young person wish to find out the relevant catchment area school/s (English/Welsh medium or denominational) where a catchment policy is in operation.
- That there is no right of appeal in relation to nursery admissions.

Interviewing

3.12 The [1998 Act](#)²² prohibits the interviewing of parents, a young person and/or a child as a method for deciding whether a place should be offered to the child/young person at a school. This includes both face to face interviews and those using the telephone or other means, for example written questions and answers and essays. Open evenings and other events for prospective parents, young people and children are not affected, but information gained at these events **must not** play a part in the decision making process. Attendance at an open evening or other meeting at the school **must not** be a condition for the allocation of a place.

3.13 This prohibition does not apply to interviews conducted by boarding schools solely for the purpose of determining a child's suitability for a boarding place (see Annex C).

Handling late applications and applications outside the normal admission round

3.14 Admission authorities **should** have an agreed policy on handling late applications. They **should** accept applications which are received after the closing date for application when a good reason is given, for example, when a single parent has been ill for some time, or a family has just moved into the area, or is returning from abroad - provided applications are received before offers of places are made. Looked after children and previously looked after children and children with statements of SEN that name a specific school **must** be admitted regardless of when their application was received.

3.15 In dealing with applications outside the normal admissions round, whether in-year or for a school year which is not the normal point of entry to the school, admission authorities **must** comply with parental preference or in the case of a sixth form a young person's preference unless one of the statutory reasons (see paragraph 2.1) for refusing admission applies.

²² Section 88R of the [1998 Act](#) inserted by the [Education and Skills Act 2008](#).

3.16 Anyone expressing an interest in admission **must** be given an application form at the first point of contact. Once received, such applications **must** be considered without delay and a formal decision either to offer or to refuse a place **should** be made and notified to the applicant within 15 school days or 28 calendar days whichever is the sooner. Applicants **must not** be refused the opportunity to make an application, or told that they can only be placed on a waiting list rather than make a formal application.

3.17 Applications for admission to school for a short period only **must** be treated in the same way as any other application for admission.

3.18 The same statutory reasons for refusing admission apply outside the normal admission round as with applications made during the normal admissions round. Admission authorities **must not** refuse to admit a child because they followed a different curriculum at their previous school. However, in such instances, parents should be made aware of the curriculum on offer at the chosen school.

3.19 While it is essential that children who have no school place are found one quickly, the [Education Act 1996](#)²³ permits deferment of admission to the start of a school term. In cases involving school transfers that do not require a house move, or where there is no need for an immediate move, admission authorities may wish to arrange for a child to start at the school at the beginning of term to minimise disruption to their own and other children's education. Admission authorities **must** ensure this does not prejudice vulnerable children such as those described in the paragraphs below.

3.20 Where an application outside the normal admission round is made some time in advance of the requested start date (e.g. where a pupil is due to move into an area several months hence) the admission authority **should** consider carefully in the circumstances of the case, the length of time it would be reasonable to hold open the place for the pupil. It would not normally be appropriate to hold open a place for more than a school term.

Looked after children and previously looked after children

3.21 [The Education \(Admission of Looked after Children\) \(Wales\) Regulations 2009](#) [amended regulations to be made] places a duty on admission authorities in Wales to admit children looked after by a LA in Wales and previously looked after children where an application for admission outside the normal admissions round is made by the corporate or adoptive parent on their behalf. Previously looked after children are children who were looked after, but ceased to be so because they were adopted²⁴ or became subject to a residence order²⁵ or special guardianship order²⁶. However, before making an application, the corporate parent (i.e. the Welsh LA responsible for looking after the child) or adoptive parent/guardian **must** consult with

²³ Section 433 of the [Education Act 1996](#).

²⁴ Under the terms of the [Adoption and Children Act 2002](#). See section 46 (adoption orders).

²⁵ Under the terms of the [Children Act 1989](#). See Section 8 which defines a 'residence order' as an order settling the arrangements to be made as to the person with whom the child is to live.

²⁶ See section 14A of the [Children Act 1989](#) which defines a 'special guardianship order' as an order appointing one or more individuals to be a child's special guardian (or special guardians).

the relevant admissions authority (and in the case of a looked after child permanently excluded from two or more schools, the governing body of the relevant community or voluntary controlled school) and make every effort to ensure the appropriateness of the named school in the light of the child's background including ALN and/or faith needs. The consultation need not be onerous and a telephone call between the parties should be sufficient.

3.22 Where an admission authority (or governing body of a community or voluntary controlled school in the case of a looked after child or previously looked after child permanently excluded from two or more schools) believes that compliance with the duty to admit a looked after child or previously looked after child would seriously prejudice the provision of efficient education or the efficient use of resources, it may, within 7 calendar days of the date on which the application is received, refer the matter to the Welsh Ministers. Any such reference must be made in writing, and **must** set out the admission authority's (or governing body's) basis for believing that serious prejudice will arise. The Welsh Ministers may either uphold the duty to admit, or if the LA that looks after the child or previously looked after child agrees, determine that another school in Wales **must** admit the child. The decision of the Welsh Ministers is binding.

3.23 The Welsh Ministers may not determine that an alternative school must admit the child if the child has already been excluded from that school or if the admission would seriously prejudice the provision of efficient education or the efficient use of resources. Where an admission application on behalf of a looked after child or previously looked after child is not referred to the Welsh Ministers, the decision to admit **must** be notified to the applicant within 10 calendar days and the child **must** be permitted to take up the place from the next available school day.

Gypsy and Traveller Children

3.24 The Gypsy Traveller community is very strongly family orientated and parents will normally want all of the children in their family to attend the same school. It is an important element of their culture that older children are expected to look after younger siblings and this especially applies in the school context. If places are not found for all children in the family in the same school, this could result in them being kept home for long periods whilst waiting for places. This potentially presents particular difficulties for admission authorities where families arrive outside the normal admissions cycle.

3.25 Arrangements **must** be in place for Gypsy and Traveller children to be registered quickly at a school whether residing permanently or temporarily in the area. Guidance on best practice in relation to access to education for this group of learners can be found in Welsh Assembly Government Circular 003/2008 ['Moving Forward - Gypsy Traveller Education'](#).

Waiting lists

3.26 Admission authorities **must** maintain waiting lists for oversubscribed schools, details of which must be set out in the published admission arrangements. Following the allocation of places during the normal admissions round, children **must**

remain on the waiting list until the 30 September in the school year in which they apply. Thereafter the parents **should** be expected to make a fresh application for admission.

3.27 If additional places become available while the waiting list is in operation they **must** be allocated to children on the waiting list on the basis of the published oversubscription criteria. Waiting lists **must not** give priority to children based on the date the application was added to the list. For example, if a child moves to an area outside the normal admissions round and has higher priority under the oversubscription criteria, they **must** be ranked above those with lower priority already on the list. Admission authorities **should** notify parents of where their child has been placed on a waiting list but **must not** give any indication of the likelihood of being offered a place.

3.28 Where school places become vacant before admission appeals are heard, admission authorities **must** fill these vacancies from any waiting list. Placing a child's name on a waiting list does not affect the parent's right of appeal against an unsuccessful application.

Admission outside the normal age group

3.29 Although most children will be admitted to a school with their own chronological age group, from time to time parents seek places outside their normal age group for gifted and talented children, or those who have experienced problems or missed part of a year, often due to ill health. While it would not normally be appropriate for a child to be placed in a year group that is not concurrent with their chronological age, admission authorities **should** consider these requests carefully and make decisions on the basis of the circumstances of each case and in consultation with the parents and the school, and specifically in relation to what is most beneficial to the child. Due regard **should** also be given to the Educational Psychologist's report where available, and clear reasons ascertainable for such a decision to be made.

3.30 If it is decided that there are grounds to consider an 'out of year' application, parents refused an application for a place at a school have a statutory right of appeal. However, there is no right of appeal if a place has been offered but not in the desired year group.

Decision taking

3.31 Where the school is its own admission authority, the admissions committee established by the governing body, **must** make such decisions²⁷. Decisions on admissions **must not** be made by one individual in a school. Where the LA is the admission authority the decision **must** be taken by the appropriate LA officer(s) (usually the admissions officer). Whilst LAs may delegate all of their admissions functions to a governing body of a community or voluntary controlled school, they

²⁷ [The Government of Maintained Schools \(Wales\) Regulations 2005](#) and the [Federation of Maintained Schools and Miscellaneous Amendments \(Wales\) Regulations 2010](#).

must not delegate to the governing body (or Head) part of the functions of an admission authority such as the power to decide admissions applications.

3.32 Heads or other school officials **must not** give parents an expectation that their application will be successful, or tell them that their child has been given a place at the school, before an offer of a place has been made formally. However, where there is evidence that parents have been told by a head, or other school official, that their child will be given a place at a school, they could reasonably expect that the person making the offer had authority to do so. If an informal offer has been made the admission authority **should** normally honour the offer, even though in fact it may not have authorised that person to make it. It is important to note that this offer should not prejudice the admission of other children who would otherwise have been offered a place if the informal offer had not been made. The making of unofficial offers could result in a breach of the class size regulations²⁸ (in the case of infant classes), and this is a matter that the school would have to address. It is therefore important to avoid such situations arising.

Notifying parents

3.33 The outcome of all admission applications **must** be notified to parents in writing. The letter **must** be expressed clearly without the use of jargon.

3.34 Where the application is being accepted, a starting date **should** be included where possible. Admission authorities **must** include a return proforma asking parents if they will/will not be taking up the place offered and set a deadline for its return.

3.35 Where the application is being rejected, the letter **must** set out the reasons for the decision taken including the number of applications received, the number of places available, and the oversubscription criteria applied. If the refusal is because of the infant class size limit this must be made clear. The letter should also include information on the parents' right of appeal against the decision, the process for doing this, and the deadline for responding.

Admission appeals

3.36 Parents may appeal against decisions "as to the school at which education is to be provided for the child in the exercise of the authority's functions"²⁹. In the case of sixth form admissions, the parent and the young person are able to appeal separately or jointly. Where they apply separately, the appeals **must** be heard together. Where an admission application is being rejected, admission authorities **must** inform parents of their right of appeal in the letter of rejection and **must not** comment on the likelihood of success. They are also required to establish independent panels to which parents can appeal against decisions to refuse admission to preferred schools. Admission authorities **must** ensure that appeals made during the timetabled admissions process are heard within 30 school days of

²⁸ [The Education \(Infant Class Size\) \(Wales\) Regulations 1998](#) as amended by [Education \(Infant Class Size\) \(Wales\) \(Amendment\) Regulations 2009](#).

²⁹ Section 94 of the [1998 Act](#).

the specified closing date for the receipt of appeals. Appeal hearings for appeals made outside the timetabled admissions process **must** be held within 30 school days of the appeal being received in writing. During the summer holidays admission authorities **must** arrange their appeals within 30 working days of the appeal being received in writing. (see paragraph 4.8 of the School Admission Appeals Code).

3.37 [The Education \(Admission Appeals Arrangements\) \(Wales\) Regulations 2005](#) as amended³⁰ set out the constitution of admission appeal panels. The School Admission Appeals Code imposes mandatory requirements and provides guidelines on how panels should be set up and how they should conduct their hearings.

3.38 Admission authorities **must** admit a child whose parents have won an appeal. If the admission authority wants to challenge the decision of the appeal panel, it may seek judicial review. The Welsh Government has no jurisdiction over the decisions of appeal panels.

Withdrawing offers of places

3.39 Once an admission authority has made an offer of a school place, it may only lawfully withdraw that offer in very limited circumstances. These may include when the admission authority offered the place on the basis of a fraudulent or intentionally misleading application from a parent or young person (for example, a false claim to residence in a catchment area) which effectively denied a place to a child with a stronger claim or where a place was offered by the LA rather than by the admission authority in error. If a parent has not responded to the offer of a place within a reasonable time (such as 21 days), and the admission authority is considering withdrawing a place, they **must** remind the parent or young person of the need to respond and point out that the place may be withdrawn if they do not.

3.40 A school place **must not** be withdrawn once a child or young person has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child had been at the school **must** be taken into account. Where a place is withdrawn on the basis of misleading information, the application **must** be considered afresh, and a right of appeal offered if a place is refused.

Duty of a governing body to implement the decision of an admission authority

3.41 The governing body of a community or voluntary controlled school, for which a LA is the admissions authority, **must** implement any decision taken by the admission authority relating to the admission of pupils³¹.

³⁰ As amended by Education [\(Admission Appeals Arrangements\) \(Wales\) \(Amendment\) Regulations 2009](#) and the [Education \(Admission Appeals Arrangements\) \(Wales\) \(Amendment No. 2\) Regulations 2009](#).

³¹ Section 88(1A) of the [1998 Act](#) (as inserted by section 43 of the [2006 Act](#)).

LA power of direction

3.42 A LA may direct the governing body for a maintained school for which it is **not** the admission authority to admit any child in their area where the child has been refused admission to, and/or is permanently excluded from, each school which is a reasonable distance from his/her home and provides suitable education, except where the child has been permanently excluded from that school³².

3.43 Before giving a direction the LA **must** consult the governing body for the school they propose to specify in the direction. If following the consultation, the LA decides to issue the direction it **must** first serve a notice in writing of its decision on the governing body and head. The governing body may, within a period of 15 days on which the notice was served, refer the matter to the Welsh Ministers informing the LA that they have done so. If the matter is not referred and the direction is issued, the governing body **must** admit the child to the school.

Other information relevant to school admission arrangements

Infant class size limit

3.44 Statutory limits on class sizes provide that when only one qualified teacher³³ is present, and subject to certain limited exceptions (see below), infant classes (reception, Year 1 and Year 2) may not contain more than 30 pupils³⁴.

3.45 An admission authority can refuse to admit a child to a school where to do so would cause class size prejudice, that is to say, prejudice to efficient education or efficient use of resources as a result of the measures that would be needed to comply with the duty to limit the size of infant classes. However, in relation to the reception year such prejudice can not be said to arise unless the schools admission number would be exceeded. In relation to years 1 and 2 admission authorities **should not** normally refuse admission on the grounds of class size prejudice unless the school's admission number would be exceeded.

3.46 Whilst there is no legislation for Key Stage 2 classes to be 30 or fewer this is the preferred class size target for the Welsh Government.

3.47 Where certain types of children ("excepted pupils") cannot be provided with education at the school in another infant class in which the limit is not exceeded without measures being taken which would prejudice efficient education or the efficient use of resources, those children are not to be counted for the purpose of ascertaining whether or not the limit of 30 is exceeded. The children are:

³² Section 96 of the [1998 Act](#) as amended by paragraph 10 of Schedule 4 to the [Education Act 2002](#).

³³ A person qualified under the [Education \(School Teachers Qualifications\) \(Wales\) Regulations 2004](#).

³⁴ Section 1 of the [1998 Act](#) and [the Education \(Infant Class Size\) \(Wales\) Regulations 1998](#) as amended by [the Education \(Infant Class Size\) \(Wales\) \(Amendment\) Regulations 2009](#).

- i. Children whose statements of SEN specify that they should be educated at the school concerned, and who are admitted to the school outside a normal admission round.
- ii. Looked after children and previously looked after children³⁵ admitted outside the normal admissions round.
- iii. Children initially refused admission to a school, but subsequently offered a place outside a normal admission round by direction of an admission appeal panel, or because the person responsible for making the original decision recognises that an error was made in implementing the school's admission arrangements.
- iv. Children who cannot gain a place at any other suitable school within a reasonable distance of their home because they move into the area outside a normal admission round.
- v. Children for whom education at a school which is Welsh speaking is desired where the school concerned is the only such school within a reasonable distance of their home.
- vi. Children for whom education at a school with a designated religious character is desired where the school concerned is the only such school within a reasonable distance of their home.
- vii. Pupils admitted to the school within an age group in which children are normally admitted and
 - admitted after the first day of the relevant school year, and
 - where the school has not yet reached its admission number but has already organised its classes, and
 - where admission of the child would mean that the school would have to take a relevant measure.
- viii. Children whose parent is in the armed forces and who is admitted to the school outside a normal admission round.
- ix. Children whose twin or other sibling from a multiple birth is admitted in the same age group otherwise than as an exempted pupil.
- x. Children who are registered pupils at special schools, but who receive part of their education at a mainstream school.
- xi. Children with SEN who are normally educated in a special unit in a mainstream school, but who receive some of their lessons in a non-special class.

3.48 In the first nine of these categories, the class may only be above 30 for that school year or the remainder of that school year. Qualifying measures **must** be taken for the following year, or the class will be unlawfully large.

Children with statements of SEN

3.49 In general, the admission of children with statements of SEN is covered by the [Education Act 1996](#)³⁶. Guidance on the admission of children with statements is provided in the Special Educational Needs Code of Practice for Wales. Consequently the admissions provisions in the [1998 Act](#) do not generally apply to children with statements of SEN. Section 324 of the [Education Act 1996](#) requires a

³⁵ Points ii, viii, ix are subject to amendment Regulations.

³⁶ Sections 312 to 349 of, and Schedules 26 and 27 to the [Education Act 1996](#).

maintained school that is named in a statement of SEN to admit the child. Schools cannot refuse to admit even if by doing so they would exceed their admission number.

3.50 If a LA has provided a statement for a child with SEN it is responsible for ensuring that the special educational provision is made for the child. The LA may identify a particular school which it considers to be suitable for the child's needs, and name the school in the statement. If the parent of a child with a statement of SEN wishes to appeal against the school named in the statement, or the fact that no school has been named, the appeal is to the Special Educational Needs Tribunal for Wales, not to the admission appeal panel.

Children with SEN without statements

3.51 Children with SEN but without statements **must** be treated as fairly as other applicants. Admission authorities **must not** refuse to admit a child because they consider themselves unable to cater for his or her SEN. Admission authorities **must** consider applications from children who have SEN but no statement, on the basis of the school's published admission criteria. They **must not** refuse to admit a child on the grounds that he or she does not have a statement of SEN, or is currently being assessed for one. Where admission authorities give some priority to children with special, medical or social needs etc but without a statement, their published admission arrangements **should** explain what evidence of need is required to qualify under the criterion.

Children with challenging behaviour

3.52 Admission authorities **should not** refuse to admit a child on the basis of their behaviour elsewhere. Schools **should not** refuse to admit a child thought to be potentially disruptive, or to exhibit challenging behaviour, on the grounds that the child ought first to be assessed for SEN. The law disapplies the normal principle that parents' preferences should be complied with, only in the 'twice excluded' situation described in paragraph 3.54. If following admission, a child is found to be seriously and persistently disruptive, then the school may consider disciplinary action, including temporary and, ultimately, permanent exclusion procedures. However it is important to note that children with challenging behaviour may be disabled as defined in the [Equality Act 2010](#) and therefore require reasonable adjustments to be made for them in the school or require SEN support. The school **must** be proactive in promoting disability equality in relation to these pupils, as with all disabled pupils.

3.53 Some undersubscribed schools may find that they have been required to admit an undue proportion of children with a recent history of challenging behaviour, which may have led to a permanent exclusion from another school. Admission forums **should** discuss how local admission arrangements might allow all schools to admit a more even share of such children, including children excluded from other schools, and to agree protocols for the admission of hard to place children. Admission authorities **must** have regard to their admission forum's advice.

Twice excluded pupils

3.54 Where a child has been permanently excluded from two or more schools, his/her parents can still express a preference for a school place, but the requirement to comply with that preference is removed for a period of two years from the date on which the latest exclusion took place³⁷.

This does not apply to:

- Children with statements of SEN.
- Children who were below compulsory school age when excluded.
- Children who were reinstated following a permanent exclusion.
- Children who would have been reinstated following a permanent exclusion had it been practicable to do so.
- Looked after children and previously looked after children, where the application for admission is made by or on behalf of the corporate parent.

3.55 A permanent exclusion is regarded as taking effect from the first school day the head has told the child not to attend school.

3.56 The admission authority for the school may refuse admission, or in the case of a community or voluntary controlled school, the governing body may appeal against the decision of the LA as the admission authority to admit the child (see the School Admission Appeals Code for information on these appeals). LAs are still responsible for providing suitable full-time education for these children and may need to use their powers of direction or provide a place in a Pupil Referral Unit.

Hard to place children

3.57 All admission authorities **should** have protocols in place for admitting children they consider hard to place. All need to play their part in ensuring that these children, especially the most vulnerable, are admitted to a suitable school as quickly as possible. This includes admitting children to schools that are already full.

3.58 There is a balance to be struck between finding a place quickly in an undersubscribed school or one facing challenging circumstances and finding a school place that is appropriate for the child. The protocol **should** therefore ensure that no school, including those with places available, is asked to take an excessive or unreasonable number of children who have been excluded from other schools.

3.59 Protocols may include all children who arrive outside the normal admissions round who may have difficulty securing a place. Admission authorities should make reference to the guidance provided at paragraph 3.24 to 3.25 in relation to Gypsy and Traveller children. Children with SEN but without statements **should** be treated in the same way as all applicants, but protocols **should** include arrangements for ensuring that, where there is prior knowledge of a need for particular SEN support, such children are placed quickly.

³⁷ Section 87 of the [1998 Act](#).

3.60 Once these protocols have been agreed, admission forums **should** monitor how well they are working, how quickly the children are found places, and the contribution every school in the area is making.

Children of UK Service personnel and other Crown servants (including Diplomats)

3.61 Families of UK Service personnel and other Crown Servants³⁸ are subject to frequent movement within the UK and from abroad, often at relatively short notice. School places **must** be allocated to children and their families in advance of the approaching school year if accompanied by an official Ministry of Defence (MOD) or Foreign and Commonwealth Office (FCO) letter declaring a return date.

3.62 Admission authorities **must**:

- Ensure that the needs of the children of these families are taken into account.
- Allocate a school place in advance, if the applicant would meet the criteria when they move to their destination.
- Invite a Service representative or representatives of other significant concentrations of Crown servants to join the admission forum.
- Accept a Unit postal address for applications from service personnel in the absence of a new home postal address.

3.63 Admission authorities **must not**:

- Reserve places for blocks of these children, or
- Refuse a place to such a child because the family does not currently live in the LA area.

Children from overseas

3.64 Admission authorities **must** treat applications for children coming from overseas in accordance with European Union law or Home Office rules for non-European Economic Area nationals³⁹.

Teacher exchange schemes

3.65 Where a child goes abroad to accompany his or her parent on a teacher exchange scheme, the school **should** ensure that the child is able to take up his or her place on return. The child **should** remain on roll and time away may be treated as an “approved educational activity”.

3.66 The LA has a duty to find a place for a child who will become resident in their area as a result of his or her parent’s participation in a teacher exchange scheme. LAs **should** plan in advance for the needs of these children to ensure that they can

³⁸ A Crown Servant is an officer of the United Kingdom Government.
³⁹ www.homeoffice.gov.uk.

take up a suitable school place for the duration of the exchange, wherever this is practicable.

Transfers from the independent sector

3.67 As noted above, lone children may be admitted to the UK if they can show that they have a place at an independent, fee-paying school. Where a child has been given leave to enter on that basis, the Home Office will not normally grant an extension of stay, or amend the child's conditions of entry, if the child transfers to a community, voluntary or foundation school. LAs and governing bodies may wish to bear this in mind when considering a request for a transfer in respect of a child from overseas who has been previously attending a fee-paying school.

Applications made in the UK for children living abroad

3.68 Admission authorities may receive an application from parents overseas for a school place for a child who is not yet resident in the UK. The admission authority will not necessarily know when the child is expected to be resident in the UK, or whether the parents' application for leave to enter the UK has been or will be successful, or if it has been, on what terms entry has been granted. These are all considerations that an admission authority may reasonably wish to take into account when considering the application.

School uniform

3.69 School uniform plays a valuable role in contributing to the ethos and setting the tone of a school. The Welsh Government has issued guidance⁴⁰.

Learner travel

3.70 The [Learner Travel \(Wales\) Measure 2008](#) sets out specific requirements for home to school transport in Wales. The Welsh Government has issued guidance on this⁴¹.

⁴⁰ [Guidance for Governing Bodies on School Uniform and Appearance Policies – Welsh Government Circular No: 15/2011.](#)

⁴¹ [Learner Travel Operational Guidance, Welsh Assembly Government, April 2009.](#)

Annex A – The admissions timetable

The timetable and procedures for school admissions are set out in this Code and the relevant regulations. The admissions timetable applied to all maintained schools.

Local authorities have a key role in providing information to parents on admission arrangements and schools in their area.

Example timetable

Determination year (20**/20**)	
1 September	Earliest date to start consultation on proposed arrangements. Consultation must last a minimum of 8 weeks.
1 March	Deadline for the completion of the consultation on proposed admission arrangements.
15 April	Deadline for admission arrangements to be determined even if they have not changed from the previous year and a consultation has not been required.
1 May	<p>Latest date for admission authorities to send a copy of their full determined admission arrangements to their LA to allow them to compile composite prospectus.</p> <p>Latest date for LAs to publish to their website the proposed admission arrangements for any new school which is intended to open within the determination year, details of where the determined arrangements for all schools can be viewed and information on how to refer objections.</p>
Autumn Term	Publish and distribute composite prospectus to parents.

Offer year (20**/20**)	
1 October	Deadline for admission authority to publish composite prospectus.
9 November Potential Closing Date	National date for secondary school applications.
31 January Potential Closing Date	National date for primary school applications.

Offer year (20/20**) contd...**

February	Deadline for admission authorities to publish their Appeals timetables on their websites.
March	National offer day for secondary school places.
April	National offer day for primary school places.

Annex B – Oversubscription criteria

B.1 The following are examples only. Arrangements for individual schools **must** be set in the context of local circumstances and practical application of the criteria.

Community schools

B.2 Where the number of applications is equal to or less than the number of places available (please see the relevant school's published admission number) all applications will be agreed. However, where the number of applications exceeds the number of places available the admission authority will apply the following oversubscription criteria and allocate places accordingly.

1. Looked after children (children in public care) and previously looked after children.
2. Children who live within the school's catchment area with a sibling (see definition) attending the school when they join.
3. Children who live within the school's catchment area.
4. Children who live outside the catchment area with a sibling attending the school when they join.
5. Children who live outside the catchment area.

B.3 If the number of pupils in any one of the above categories exceeds the published admission number, the admission authority will use the following tie-breaker to allocate places. e.g. Safe walking distance between home and school as measured from the main school entrance to the main entrance of the pupil's home using ... software.

Voluntary aided schools

B.4 Admission authorities for schools with a designated religious character (faith schools) may give first priority to all looked after children and previously looked after children, whether or not of the faith but **must** give first priority to looked after children and previously looked after children of their faith above any other children of their faith. If they give first priority to looked after children and previously looked after children of the faith, then they must give a higher priority to looked after children and previously looked after children not of the faith than other children not of that faith. Such as in the following example:

1. Looked after children (children in public care) and previously looked after children of the faith.
2. Children of the faith who live within the school's catchment area with a sibling (see definition) attending the school when they join.
3. Children of the faith who live within the school's catchment area.
4. Children of the faith who live outside the catchment area with a sibling attending the school when they join.
5. Children of the faith who live outside the catchment area.
6. Looked after children (children in public care) and previously looked after children not of the faith .

7. Children not of the faith who live within the school's catchment area with a sibling (see definition) attending the school when they join.
8. Children not of the faith who live within the school's catchment area.
9. Children not of the faith who live outside the catchment area with a sibling attending the school when they join.
10. Children not of the faith who live outside the catchment area.

B.5 If the number of pupils in any one of the above categories exceeds the published admission number, the admission authority will use the following tie-breaker to allocate places. e.g. Safe walking distance between home and school as measured from the main school entrance to the main entrance of the pupil's home using ... software.

Annex C – Boarding schools

C.1 There is currently only one maintained boarding school in Wales. This Annex applies specifically to that school and sets out the framework within which admissions to boarding places at the school should be made.

Admission procedures

C.2 As maintained schools, boarding schools **must** adopt a set of published admission criteria for both day and boarding places which comply with education and equality legislation and with the provisions of this Code.

C.3 Boarding schools may adopt separate admission numbers and, if they wish, separate oversubscription criteria for day and boarding places.

C.4 Where there are more applicants who are suitable to board than there are boarding places available, the school **must** apply the oversubscription criteria set out in its published admission arrangements. These criteria **must** be set in accordance with the provisions of this Code and legal requirements and **must not** amount to any form of selection by aptitude or ability, except where otherwise permitted. The oversubscription criteria **must not** include criteria for deciding which pupils are most suitable to board. Interviews and any other information used to judge suitability **must not** be used to determine admission to day places. Setting fair, clear and objective admission criteria should ensure that admission authorities can clearly demonstrate to parents and carers how places have been allocated.

Boarding need

C.5 Boarding schools have an important role in providing places for the most vulnerable children and in providing a stable educational environment for those whose parents have jobs or careers which dictate that they often have to work outside the country. Boarding schools **must** therefore, after giving the required priority to looked after children and previously looked after children, give next priority in their oversubscription criteria for boarding places to ‘children with a boarding need’. Boarding schools **must** ensure that it is clear to parents what is meant by ‘boarding need’.

C.6 Although this is not a comprehensive list, children with a boarding need include:

- i. children at risk
- ii. children from single parent families
- iii. children with an unstable home environment
- iv. children of members of the British forces overseas
- v. children of key workers working abroad (e.g. the children of charity workers, people working for voluntary service organisations, the diplomatic service or the European Union, teachers, law enforcement officers and medical staff working abroad) whose work dictates that they spend much of the year overseas.

C.7 Those children described at paragraph C.6 (i) to (iii) **should** be given priority regardless of their normal place of residence, and children described in paragraph C.6 (iv) and (v) **should** be given priority when the normal place of residence is based in the locality or priority area of the school.

Suitability for boarding

C.8 A maintained boarding school is entitled to consider an applicant's suitability for boarding before deciding whether to award a boarding place.

C.9 In order to determine the suitability of an applicant to board, the school may have regard to:

- The outcome of an interview with the applicant carried out for that sole purpose.
- Information provided by the applicant's parent, corporate parent, or guardian, on a supplementary application form provided for the same purpose.
- Information provided by the applicant's current school or - if he or she is currently out of school - previous school, requested and provided for the same purpose.
- Information provided by the home LA on safeguarding issues.

C.10 An 'interview' in this context means face-to-face or telephone interviews or meetings with the candidate used to determine suitability for boarding. The general prohibition on interviewing as part of the admissions process does not apply to such interviews.

C.11 Boarding schools **must not** use any other processes to determine suitability. They **must not** ask for or consider information on religious background (unless this is relevant to assessment against published admission arrangements), home circumstances, academic ability, sporting or artistic ability, academic interests or other extraneous matters such as low level misbehaviour. If any such information is provided it **must** be disregarded.

C.12 There is no requirement for admission authorities to use interviews and supplementary application forms to assess suitability, but where they do, they **must** take account of the guidelines contained in this Code.

C.13 Suitability for boarding **must not** be adopted as an oversubscription criterion. Schools with boarding places **must** determine their oversubscription criteria in accordance with the mandatory provisions and guidelines set out in Chapter 2 of this Code. Published admission arrangements **must** state that the school will additionally carry out a process to establish suitability for boarding which will involve an interview and/or using supplementary application forms (if the boarding school decides it wishes to use interviews and supplementary application forms).

Definition of suitability

C.14 Suitability does not refer to those children who best fit the school's ethos. Suitability refers to:

- Whether a child presents a serious health and safety hazard to other boarders, or
- Whether a child is developmentally suited to a boarding place.

C.15 For boarding places, the admission authorities are entitled to take the view that a history of major behavioural difficulties such as sexual misconduct, arson or extreme physical violence is likely to render an applicant unsuitable to board. Low level misbehaviour would not do so.

Preparing for and conducting an interview

C.16 In preparing for and conducting interviews for boarding places schools must:

- Focus purely on whether the applicant would be able to cope with and benefit from a boarding environment.
- Be fair and open. Children and parents **must** be informed of the process in advance, and know what to expect from the interview.
- Give children a chance to state separately from their parents whether they wish to board.

C.17 It is good practice to brief applicants and their parents carefully about the purpose and structure of the interview beforehand. Applicants **should** be put at their ease during the interview, and interviewers **must** make every reasonable effort to accommodate the needs of those with special needs or a disability (e.g. hearing impairment or speech difficulty). In some circumstances, it may be necessary for interviews to be conducted through an interpreter.

C.18 Admission authorities **must not**:

- Require or request children to sit any form of written or verbal test of knowledge, ability or attitudes.
- Seek to screen out pupils who have a record of low level poor discipline which has not resulted in them being twice permanently excluded. This prohibition includes asking questions which seek to ascertain whether applicants' reactions to conflict situations are conciliatory or confrontational.
- Seek to screen out pupils who are not as outgoing or confident as others, or as eloquent.
- Seek information about parental background, finances, marital status or religion.
- Seek information about home circumstances.
- Seek to obtain information about low level misbehaviour, absenteeism, academic ability, sporting, artistic or any other form of achievement or ability, or

- Ask questions about whether applicants know any existing boarders.

C.19 If an admission authority determines that an applicant is not suitable for boarding, it **must** inform the parents in writing of the reasons for the determination and, as with other refusals of admission (i.e. for a day place), the right of appeal and who to contact to lodge an appeal.

Annex D – Admission forums

D.1 Admission forums have a key role in ensuring a fair admissions system that does not disadvantage one child compared with another and is straightforward and easy for parents to understand. Forums are responsible for monitoring compliance with this Code and where they consider admission arrangements to be unfair or not in accordance with this Code and cannot resolve the matter locally they may refer the matter to the Welsh Ministers for consideration. These guidelines should be read in conjunction with the [Education \(Admission Forums\) \(Wales\) Regulations 2003](#).

Legal requirement

D.2 Section 85A of the [1998 Act](#) (inserted by section 46 of the [Education Act 2002](#)) requires all LAs to establish an admission forum. Admission forums provide a vehicle for admission authorities and other key interested parties to discuss the effectiveness of local admission arrangements, consider how to deal with difficult admission issues and advise admission authorities on ways in which their arrangements can be improved. Admission authorities of all maintained schools, when exercising their functions, **must** have regard to any advice offered by the forum. LAs may establish a joint forum with one or more other LAs to consider and advise on admissions in more than one authority area.

Role of admission forums

D.3 Admission forums have a key role in ensuring a fair admissions system that promotes social equity and **must** under section 84 of the [1998 Act](#), act in accordance with this Code. The role of admission forums is set out in Regulations⁴². Admission forums **must**:

- Consider how well existing and proposed admission arrangements serve the interests of children and parents within the area of the LA.
- Promote agreement on admission issues.
- Consider the comprehensiveness and accessibility of the admissions literature and information produced for parents by each admission authority within the area of the forum.
- Consider the effectiveness of the LAs proposed co-ordinated admission arrangements.
- Consider the means by which admissions processes might be improved and how actual admissions relate to the admission numbers published;
- Monitor the admission of children who arrive in the LA's area outside a normal admission round with a view to promoting arrangements for the fair distribution of such children among local schools, taking account of any preference expressed in accordance with arrangements made under section 86(1) of the [1998 Act](#) and in accordance with this Code.
- Promote the arrangements for children with SEN, children in care and children who have been excluded from school.
- Consider any other admissions issues that arise.

⁴²

[Education \(Admission Forums\) \(Wales\) Regulations 2003](#).

D.4 Admission forums should consider appropriate application and offer dates for all primary and secondary school admissions within their area in consultation with neighbouring authorities as appropriate.

Ensuring fair access

D.5 In discharging these responsibilities, admission forums **must**:

- Review the comprehensiveness, effectiveness and accessibility of advice and guidance for parents by the LAs and schools through the published composite prospectus (see paragraph 2.12).
- Agree procedures for ensuring that potentially vulnerable children and those who arrive in the area outside the normal admissions round are placed in a school as quickly as possible. Vulnerable children include those previously excluded from school, children in care, young offenders, children with ALN and/or disabilities, Gypsy and Traveller children, or those who are hard to place, or have challenging behaviour. Managed transfers of such children should be handled as quickly and sensitively as possible. The forum should ensure that all admission authorities in the area are aware of the agreed procedures and should monitor to ensure that they are working effectively.
- Monitor compliance with the School Admissions, and School Admission Appeals Codes and related legislation.

Annual reports on effectiveness of local admission arrangements

D.6 Admission forums must provide a summary annual report which **should** be made public (with due consideration for confidential references to pupils) and include the following information:

- membership of forum
- dates of meetings held during the year
- number of attendees
- number of parental preferences that were met
- number of admission appeals made for schools in the area (including information on how many were successful and unsuccessful)
- ethnic and social mix of pupils attending schools in the area, including Gypsy and Traveller children
- what admission arrangements have been put in place to serve the interests of vulnerable children
- how well in-year agreed admission procedures are working and the number of children admitted to each school under the procedures and
- a short summary of the key admission issues in the area and how the forum has addressed them.

D.7 Such reports are a valuable tool in ensuring an open and fair admission system as admission authorities **must** have regard to any advice published by the admission forum. A copy of the report **should** be sent by 30 November each year to Schools Management and Effectiveness Division of the Welsh Government, and be distributed to those with a vested interest in ensuring the needs of vulnerable children are met.

Membership

D.8 The core membership of admission forums is set out in Regulations and is shown in the table below:

Members nominated by	Number
LA - any member or officer of the authority	1 to 5
Church in Wales Diocesan representatives	1 to 3
Roman Catholic Diocesan representatives	1 to 3
Schools - community and voluntary controlled	1 to 3
Schools - foundation	1 to 3
Schools - voluntary aided	1 to 3
Parent governor representatives	1 to 3
Representatives of the local community	up to 3

D.9 Each representative of a school **should** be a head, or a governor (other than one appointed to the school by the LA who is also a member of the authority). Admission forums **should** include representatives of neighbouring LAs where, for example, there are significant cross-border issues or they have a contribution to make. These representatives would be in addition to those of the home LA.

D.10 The core membership of each forum may ask the LA to appoint anyone it considers appropriate to represent significant interests in the local community. For instance, in areas where there is a significant concentration of service personnel the forum **must** invite a UK service representative and where appropriate, representatives from faith groups not already represented, and minority ethnic groups **should** be appointed.

D.11 If the forum considers that it would be useful to appoint additional members to represent the interests of any section of the local community the LA **should** appoint such members. For example, where the forum is considering issues relating to the admission of looked after children and previously looked after children, it **should** ask the LA to appoint LA officers with expertise in children's social care. Where there is a particular issue that needs investigation and more detailed consideration LAs **should** create a working group (which does not need to consist of forum members) to carry out this work and report-back to the forum.

Tenure

D.12 Core members and school members of the forum are appointed for a period not exceeding 4 years, after which they are eligible for reappointment. Other members of the forum are appointed on the terms determined by the core members, including whether or not they are to be eligible for reappointment at the end of their term. Membership of the forum **should** be reviewed in September each year. If a school member ceases to be a head or school governor, they cannot continue on the forum in that capacity.

D.13 The LA may also establish sub-committees to help the forum in the performance of its functions. Sub-committees might be appropriate for considering primary and secondary issues separately, or, if the relevant area is large and has areas with distinct admissions patterns, separate sub-committees might consider issues in each area, before bringing them back to the main forum for discussion.

Procedure for meetings and appointment of officers

D.14 Regulations require forums to meet at least twice a year, but the procedure for the meetings is regulated by the core members themselves. All members of the forum **should** be given at least 7 working days notice of the time and date of the meeting and be given any documents relevant to that meeting 7 days in advance. The forum **must** appoint a Chair and Vice Chair, who may or may not be members of the forum, and a Secretary to convene its meetings.

Promulgating advice and making objections

D.15 Admission forums **should** seek to achieve a consensus among the whole membership rather than secure a majority opinion and **should** only promulgate advice that represents the agreed views of the forum as a whole.

D.16 The LA **must**, as a minimum, publish the forum's advice on the school admissions section of their website and send copies to all admission authorities in the area. The advice **should** also be included in the composite prospectus published by the LA each year for parents.

Annex E – Other relevant legislation

E.1 Below is set out the primary legislation most relevant to admissions decisions. Admission authorities, adjudicators, appeal panels, LAs and schools **must** comply with the relevant law as well as acting in accordance with the provisions of this Code and following its guidelines. The information here aims to signpost the relevant law; it does not aim to provide definitive guidance on interpreting the law: that is for the courts.

Equality Act 2010

E.2 This Act consolidates the law prohibiting discrimination, harassment and victimisation and expands the list of protected characteristics. All schools **must** have due regard to their obligations under the Act and review their policies and practices to make sure these meet the requirements of the Act, even if they believe that they are already operating in a non-discriminatory way.

E.3 An admission authority **must not** discriminate on the grounds of disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; or sexual orientation, against a person in the arrangements and decisions it makes as to who is offered admission as a pupil.

E.4 An admission authority **must not** harass a person who has applied for admission as a pupil, in relation to their disability; race; or sex.

E.5 An admission authority **must not** victimise a person in relation to a protected act either done, or believed to have been done by that person (e.g. bringing proceedings under the [Equality Act 2010](#)) in the arrangements and decisions it makes as to who is offered admission as a pupil.

E.6 This Act contains limited exceptions to the prohibition of discrimination on grounds of religion or belief and sex. Schools designated by the Welsh Ministers as having a religious character (faith schools) are exempt from some aspects of the prohibition of discrimination on the grounds of religion or belief and this means they can make a decision about whether or not to admit a child as a pupil on the basis of religion or belief. Single-sex schools are lawfully permitted to discriminate on the grounds of sex in their admission arrangements.

E.7 Admission authorities are also subject to the Public Sector Equality Duty and therefore **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.

E.8 The protected characteristics for these purposes are: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

E.9 Further guidance on the Public Sector Equality Duty is available on the website of the Government Equalities Office and from the Equality and Human Rights Commission.

Human Rights Act

E.10 The [Human Rights Act 1998](#) confers a right of access to education. This right does not extend to securing a place at a particular school. Admission authorities, however, do need to consider parents' reasons for expressing a preference when they make decisions about the allocation of school places, to take account of the rights of parents under the Act, though this may not necessarily result in the allocation of a place. These might include, for example, the parents' right to ensure that their child's education conforms to their own religious or philosophical convictions (as far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure).

United Nations Convention on the Rights of the Child (UNCRC) and the Rights of Children and Young Persons (Wales) Measure 2011

E.11 The UNCRC is an international agreement, which brings together additional human rights into a single Convention, which aims to protect and provide support for children and help them to achieve wellbeing.

E.12 The UNCRC has been incorporated into Welsh domestic law, in so much as it affects the Welsh Ministers, through the [Rights of the Children and Young Persons \(Wales\) Measure](#).

Annex F – Model application form

This is a model application form and should be amended to reflect the needs of the admission authority.

Name and address of Admissions Authority

Application for admission to [Infant/Junior/Primary/Secondary] school (NB: Separate forms should be made available for each relevant year of entry).

Please read this form carefully and complete it as fully as possible. The information you give will be used to allocate a school place to your child.

1. Child's full name [A]

2. Child's date of birth

3. Child's sex M/F

4. Child's place of residence, including post code [B]

5. Parent's name/s [C]

6. Parent's address and telephone number

Please telephone [name of person] on [tel. no.] for information on your catchment area, English and Welsh medium schools and Roman Catholic and Church in Wales schools. [D]

7. Please indicate below your preferred school/s (in order of preference); you may express more than one preference and give a reason for your preference/s. [E]

i.

ii.

iii.

*Expressing a preference does not guarantee admission to your chosen school but it will give your child priority over children whose parents have **not** expressed a preference for that school. If you do not express a preference, or you submit this form late it will be less likely that your child will be able to attend the school of your choice.*

8. Is the child a Looked After Child/Previously Looked After Child? Yes/No. If yes, please also state the corporate or previous corporate parent. [F]

9. Does the child hold a statement of SEN which names a school? Yes/No. If yes, which school is named? [G]

10. Please give the names and dates of birth of the child's siblings who are already attending the preferred school/s. [H]

Name	_____	DOB	_____	School	_____
Name	_____	DOB	_____	School	_____

11. Please give the name of the child's current infant/junior/primary school. [I]

12. Please indicate your child's special medical circumstances, if any. [J]

13. Has the child been baptised? Yes/No. If, yes, please submit a copy of the baptismal certificate with this form. [K]

14. Is the child/Are the child's parents communicant members of X Church? Yes/No. If yes, please submit with this form a supporting statement from the priest/minister or other Church representative. [L]

*If the number of applications to your preferred school is fewer than or equal to the number of places available, **all** applicants will be admitted. **However**, if the number of applications to your preferred school is greater than the number of places available, the information you give below will be used to rank your child's priority for a place in line with the oversubscription criteria which are:*

[List of oversubscription criteria.]

If your application to your preferred school is unsuccessful, we will consider your second preference for your child.

This form must be returned to [name] at [address] by [date]. [M] Applications received by this date will be considered together and places allocated.

Signed _____ **Parent**

Date _____

Notes

- A. It is not appropriate to ask for “Christian” name since not all applicants may be Christian.
- B. Where necessary the authority may wish to indicate that proof of residency may be required.
- C. In relation to a young person or child, the term ‘Parent’ includes any person who is not a parent but who has parental responsibility or care of the child.
- D. Insert the name and telephone number of a person who holds information on catchment area English/Welsh/denominational schools.
- E. You may not limit the number of preferences a parent may express.
- F. All applications made on behalf of Looked After Children and previously looked after children must be approved by the relevant admission authority.
- G. If a school is named in a statement of SEN, the admissions authority has a duty to admit the child to that school.
- H. You may only ask for siblings’ details where sibling links feature in your admissions arrangements’ oversubscription criteria. You should clarify in your admissions arrangements how you intend to define ‘siblings’ e.g. full, half, step, adopted and fostered brothers and sisters. This criterion may not include relatives who previously attended the school.
- I. You may only ask for the child’s previous school where a feeder school system is in operation.
- J. You may only ask this question if your oversubscription criteria give priority to children under medical circumstances.
- K. You may only ask this question if your oversubscription criteria give priority to children baptised into the faith of the school.
- L. You may only ask this question if your oversubscription criteria give priority to children who are themselves/whose parents are communicant members of the Church named.
- M. Insert name and address of person responsible for receiving admission forms.

Annex G – Commencement

Provision	Coming into force
Common dates of offer (paragraph 2.23)	In respect of admission arrangements for 2014/15.
Giving previously looked after children highest priority in published admission arrangements (paragraph 2.29)	In respect of admission arrangements for 2014/15.

Glossary

Academic Year

The 12 month period commencing 1 September to 31 August the following year.

Admission arrangements

The overall procedure, practices and oversubscription criteria used in deciding the allocation of school places.

Admission authority

The body responsible for setting and applying a school's admission arrangements. For community or voluntary controlled schools, the LA is the admission authority; and for foundation or voluntary aided schools, the governing body of the school is the admission authority.

Admission forum

A statutory local body charged with co-ordinating the effectiveness and equity of local admission arrangements. The Forum comprises representatives of admission authorities and schools, dioceses, the local community and parent governors.

Admission number

The number of school places that the admission authority **must** offer in each relevant age group of a school for which it is the admission authority. Admission numbers are part of a school's admission arrangements, and **must** be consulted upon with the rest of a school's admission arrangements and be published with those arrangements in the school's prospectus and the LA composite prospectus.

Admission Round (Normal)

The normal admission round begins in September/October it is the period when parents are invited to apply for admission to any community, voluntary or Foundation school and ends on the date that offers of places are issued in the academic year before admission or transfer. This is usually in years before reception, year 2 and year 6 for those authorities operating infant, junior and secondary schools.

Banding

A system of oversubscription criteria in which all children applying for a place at a banding school are placed into ability bands based on their performance in a test or other assessment. Places are then allocated so that the school's intake either reflects the ability profile of those children applying to the school, those children applying to a group of schools banding jointly, the LA ability profile or the national ability profile

Catchment area

A geographical area, from which children may be afforded priority for admission to a school. A catchment area is part of a school's admission arrangements and **must** therefore be consulted upon, determined and published in the same way as other admission arrangements. Voluntary aided schools may choose to define their catchment area as their parish boundary, this **must** be made clear.

Children in public care; Looked after children; Children in care

Children who are in the care of LAs as defined by section 22 of the [Children Act 1989](#). In relation to school admissions legislation a 'looked after child' is only considered as such if the LA confirms he or she will be in public care when he or she is admitted to a school.

Composite prospectus

The prospectus that a LA is required to publish by 1 October or at least six weeks before parents express their preferences for schools. This prospectus **must** include the detailed admission arrangements of all maintained schools in the area (including admission numbers, catchment areas and the timetabled admissions process).

Conditionality

Oversubscription criterion that stipulates conditions that affect the priority given to an application, for example taking account of other preferences or giving priority to families who include in their other preferences a particular type of schools (e.g. where other schools are of the same religious denomination). Conditionality is prohibited by this Code.

Corporate parent

The Welsh LA responsible for making an application for admission to school on behalf of a looked after child/child in care.

Determination year

The academic year immediately preceding the offer year. This is the academic year in which admission authorities determine their admission arrangements.

Furthest from and nearest to

Children who live the furthest from and nearest to the next appropriate alternative school e.g. community, voluntary or Welsh medium, at which places are available.

Governing bodies

School governing bodies are bodies corporate responsible for conducting schools with a view to promoting high standards of educational achievement. Governing bodies have three key roles: setting strategic direction, ensuring accountability and monitoring and evaluation. Governing bodies of voluntary aided and foundation schools are admission authorities for their schools.

Home Schooling/Flexi Learning

The education of children at home, typically by parents but sometimes by tutors rather than in a formal setting. Some children attend schools part time on days arranged between parents and head teachers.

Home-school agreements

A statement explaining: the school's aims and values; the school's responsibilities towards its pupils who are of compulsory school age; the responsibilities of the pupil's parents; and what the school expects of its pupils. It is not acceptable to require signature of a home-school agreement as a condition of admitting a child to a school.

Infant class size exceptions

These are prescribed exceptions to the statutory requirement that infant classes **must** be no more than 30 per school teacher. These include: the admission of looked after children and previously looked after children outside the normal admission round; the admission of pupils for whom no other maintained school is available within the area; children admitted on appeal; a child who was originally refused a place in error; and pupils with statements of SEN which name the school. In all these cases the class can only remain in breach of the statutory requirement for that school year; qualifying measures **must** be taken to ensure that the class size regulations are complied with for following years.

Infant class size limit

The [1998 Act](#) requires children aged 5, 6, and 7 to be taught in classes of no more than 30 per school teacher.

Junior class size target

The Welsh Government has a target of ensuring children aged 7 to 11 are taught in classes of no more than 30 per school teacher.

Oversubscription criteria

The list of criteria an admission authority **must** adopt for its school(s) which are used only when the school is oversubscribed to assess which children will be offered a place. Once determined, admissions criteria, including the admission number, **must** be published by the school and in the LA composite prospectus at least 6 weeks before parents express their preferences.

Parent

The definition of “parent” in section 576 of the [Education Act 1996](#) includes: all natural parents, whether married or not; any person who, although not a natural parent, has parental responsibility for a child or young person; and any person who, although neither a natural parent nor a person with parental responsibility, has care of a child or young person. Any reference to a “parent” for the purpose of this Code should be interpreted as the above definition of “parent” under the [Education Act 1996](#).

Parental responsibility

“Parental responsibility” is defined in the [Children Act 1989](#) and means assuming all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. The [Children Act 1989](#) states that if a child’s natural parents were not married when the child was born the mother automatically has parental responsibility. The father can, however, acquire parental responsibility by various legal means. It is now the case (following the enactment of the [Adoption and Children Act 2002](#)) that a father who is registered as such in the register of births and deaths also automatically attains parental responsibility. In addition, it is now the case that ‘step-parents’ (which includes civil partners) can acquire parental responsibility, for example by entering into an agreement with a parent with parental responsibility.

Previously looked after children

Looked after children who ceased to be so because they were adopted or became subject to a residence order, or special guardianship order immediately following having been looked after.

Public Services Ombudsman for Wales

An independent, impartial and free service that looks into complaints by members of the public where they have suffered hardship or injustice through maladministration or service failure on the part of a public body in Wales.

Relevant area

The area for a school (determined by its LA and then reviewed every two years) within which the admission authority for that school must consult all other schools on its admission arrangements.

**Section 1A: Explanatory
memorandum to the school
admissions code**

Explanatory memorandum to the school admissions code

This Explanatory Memorandum has been prepared by the Department for Education and Skills and will be laid before the National Assembly for Wales.

Description

The Code on School Admissions contains practical guidance and imposes requirements in respect of the discharge by local authorities (LAs), the governing bodies of maintained schools, admission appeal panels and admissions forums of their school admissions functions under the School Standards and Framework Act 1998 (the 1998 Act). The Code includes guidelines setting out the aims, objectives and other matters relating to the discharge of admissions functions and each of the bodies or persons covered must “act in accordance with” the Code. The Code replaces the Welsh Assembly Government’s School Admissions Code which was published in July 2009 (the 2009 Code).

Legislative Background

The powers allowing the making of this Code are contained in Section 84 and 85 of the 1998 Act (as amended by Section 40 of the Education and Inspections Act 2006 (the 2006 Act)). These powers have been transferred to the Welsh Ministers by the virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Section 84 of the 1998 Act permits the Welsh Ministers to issue a revised Code on admissions appeals as appropriate. Section 85 of the 1998 Act lays down the procedure to be followed when a revised Code under Section 84 is prepared. Welsh Ministers must first consult on the draft Code and then follow the negative resolution procedure.

Purpose and intended effect of the legislation

The revised Code is intended to provide greater clarity and enhanced guidance than the 2009 Code.

Strengthening the Code should make it easier for everyone with an interest in admissions and admission appeals to fulfil their duties correctly and clarification of the guidance should improve practice on the ground. The main changes introduced by the Code are:

As a result of changes to the law and to provide further clarification of some issues:

- The School Information (Wales) Regulations) 2011 revoke and replace the Education (School Information) (Wales) Regulations 2002. References to the Regulations have been updated.
- We have inserted additional information to the text around admission numbers, to make clear that the number should not be routinely exceeded. We believe that this will assist local authorities in balancing supply and demand of school places and help to avoid overcrowding in some schools, which can lead to surplus capacity in others.

- Strengthening information by removal of ambiguity on class sizes and the school capacity.
- More detailed glossary and index.

Proposed changes we wish to make and will be seeking views upon as part of the consultation exercise:

- The School Admissions Code already states that admission authorities within each admissions area must have common dates for the return of applications. We have taken this opportunity to suggest that the common dates which are used when offering places are 1 March or the next working day and 16 April or the next working day for secondary and primary schools respectively. We have inserted these dates having researched current closing dates for applications across the whole of Wales.
- To coincide with the proposed offer dates we have included sample timetables for determination year and admissions, in order to clarify the process for all.
- Three new categories of 'excepted pupils' relating to previously looked after children, children of armed forces personnel and children from multiple births, which will later be incorporated into Regulations.

Implementation

It is intended that the Code will be made in 2013 [date to be decided] and come into force in 2014/15.

Consultation

The Code is being consulted on together with the Code on School Admission Appeals.

Regulatory Impact Assessment

As this Code is not a statutory instrument a Regulatory Impact Assessment is not required.

Section 2: School admission appeals code

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Chapter 1 – Introduction

1.1 This Code is made under section 84 of the [School Standards and Framework Act 1998](#) (referred to in this Code as the [1998 Act](#)) as amended by the [Education and Inspections Act 2006](#) (referred to in this Code as the [2006 Act](#)), which requires the Welsh Ministers to issue a Code in respect of the discharge of admissions functions by local authorities (LAs), the governing bodies of foundation and voluntary aided schools, admission forums and admission appeal panels. Each of the bodies mentioned has a statutory duty to “act in accordance” with this Code and the School Admissions Code.

1.2 This Code supersedes the previous Code of Practice on School Admission Appeals and applies to admission appeals for primary and secondary school intakes (including sixth forms/Year 12) there is **no** right of appeal for allocation of Nursery places. It comes into force in 2013 [date to be decided] and applies to all appeals made in respect of the 2014/15 academic year and onwards. It should be read alongside the School Admissions Code and other guidance and legislation that affect admissions and admissions appeals in Wales.

1.3 The Code refers to statutory requirements (i.e. imposed by primary or secondary legislation) and imposes mandatory requirements which those bodies listed at paragraph 1.5 below **must** comply with. A reference to the relevant statutory provision is provided in the text or footnote. Where mandatory requirements are imposed by this Code (or by statutory provisions) it is stated that the relevant bodies **must** comply with the particular requirement or provision. Where this Code prohibits practices, it is stated that the relevant body or bodies **must not** use this practice.

1.4 This Code also includes guidelines which the relevant bodies should follow unless they can demonstrate, if challenged, that they are justified in not doing so. Where guidelines refer to good practice, the Code will state that the relevant bodies **should** follow the particular guidelines. Where the guidelines refer to a practice normally regarded as poor practice, the Code will state that the practice **should not** be used although there may be exceptional circumstances when its use may be justified.

1.5 The following bodies have a statutory duty to act in accordance with both this Code and the School Admissions Code:

- a. **Admission authorities** – LAs are the admission authorities for community and voluntary controlled schools, unless under section 88(1)(a)(ii) of the [1998 Act](#), the function has been delegated to the governing body. Governing bodies are the admission authorities for foundation schools and voluntary aided schools.
- b. **Governing bodies** (including those that are not admission authorities).
- c. **LAs** (when not acting as an admission authority).
- d. **Admissions forums.**
- e. **Admission appeal panels.**

Admission authority for each type of school

Type of School	Who is the admission authority	Who is responsible for arranging an admission appeal
Community Schools	LA	LA
Voluntary Controlled Schools	LA	LA
Foundation Schools	Governing Body	Governing Body
Voluntary Aided Schools	Governing Body	Governing Body

1.6 This Code deals with two separate categories of admission appeals:

- Appeals by parents⁴³ or young persons in the case of sixth form admissions against a decision by a school admission authority to refuse to offer a place at the school in question, and
- Appeals by governing bodies of community or voluntary controlled schools against a decision by a LA as their admission authority to admit to their school a child who has previously been permanently excluded from two or more schools.

1.7 These two types of appeal are dealt with separately in this Code in Chapters 2 to 6, and Chapter 7 respectively.

1.8 As local circumstances vary greatly, this Code does not seek to give guidance on every possible situation. Nor does it prescribe exactly how those responsible for making arrangements, or appeal panel members, **should** operate beyond the statutory requirements which are set out and explained in the Code. There needs to be flexibility and sensitivity to individual circumstances when dealing with appeals, providing that these stay within the legal framework.

1.9 The Code is primarily for those responsible for making appeal arrangements and for panel members and clerks to the panels. The Welsh Government may issue simplified guidance for parents and young persons on the appeals system but admission authorities, who are responsible for establishing appeal arrangements, are also well placed to offer parents or young persons advice about local appeal arrangements (see paragraph 4.6).

The objectives of the appeals process

1.10 The fundamental objectives of admission appeals should be to:

⁴³ [“Parents” and “Parental Responsibility” National Assembly for Wales circular No: 12/2007.](#)

- Provide an independent, impartial but informal forum for parents (and young persons in the case of sixth form admission appeals) and the admission authority concerned (or governing body and LA in the case of decisions to admit twice excluded pupils) to present their respective cases and to be confident that they will be given a fair hearing.
- Ensure that appeal panels weigh up all the evidence presented to them carefully and objectively before reaching a final decision on the appeal.
- Operate within the requirements of legislation as set out in Annex A. Appeal panels are carrying out a judicial function and **must** apply the principles of natural justice. (Annex B paragraph B3).
- Have regard to all relevant guidelines in conducting appeal arrangements, such as this Code; the Code for School Admissions; the Code of Practice for Children with Special Educational Needs (SEN).
- Provide a system which is clear, consistent and as easy to understand as possible for everyone involved.

1.11 In appeals by governing bodies against decisions to admit twice excluded pupils to their schools, the basic principles described above also apply.

1.12 Details of the legal requirements for appeals under the [1998 Act](#) as well as other legislation relevant to appeals, are set out in Annex A of this Code.

Chapter 2 – Appeals by parents/young persons: Constitution of appeal panels and statutory procedures for appeals

Introduction

2.1 The [Education \(Admission Appeals Arrangements\) \(Wales\) Regulations 2005](#) as amended⁴⁴ ('the [2005 Regulations](#)') set out the requirements for the constitution of appeals panels. There are separate legal provisions for appeals panels arranged by LAs for community and voluntary controlled schools and for panels arranged by governing bodies for foundation and voluntary aided schools. In practice the requirements are similar and it is good practice for LAs and governing bodies to set up joint panels if they choose to do so.

Membership of appeal panels

2.2 Under Regulation 3 and Schedule 1 to the [2005 Regulations](#), the LA or governing body **must** appoint either 3 or 5 members to each panel. Each panel **must** consist of:

- At least one lay member. This means people without personal experience in the management of any school or the provision of education in any school. People with experience in education in a voluntary capacity (such as helping readers) or as governor would be permitted.
- At least one person with experience in education, who is acquainted with educational conditions in the area of the authority, or who is the parent of a pupil registered at another school.

2.3 The following people are disqualified from membership of an appeal panel:

- Any member of the LA (e.g. councillors), or of the governing body of the school in question.
- Anyone, other than a teacher from another school, employed by the LA or by the governing body.
- Any person who has, or who has ever had, any connection with the LA or the school (e.g. former members of the governing body), or with any member or employee of the LA or governing body such that doubts might reasonably be raised over his or her ability to act impartially regarding the LA or the school. Employment by the LA as a teacher is not in itself a reason for disqualifying someone from membership - unless there is another reason to call into question their ability to act in an impartial manner.

⁴⁴ As amended by the [\(Admission Appeals Arrangements\) \(Wales\) \(Amendment\) Regulations 2009](#) and the [Education \(Admission Appeals Arrangements\) \(Wales\) \(Amendment No. 2\) Regulations 2009](#).

- Any person who was party to, or took part in, any discussions regarding the decision not to admit the child or young person about whom the appeal is concerned.

2.4 Individual panel members **must** disclose whether any of the circumstances described in paragraph 2.3 apply to them.

2.5 Where a LA and/or school governing bodies make joint arrangements for appeals, references in paragraphs 2.2 to 2.3 to the governing body and school apply to any governing body or any school involved in the arrangements.

2.6 LAs and governing bodies may appoint sufficient panel members to enable two or more panels to sit at the same time (but see also paragraphs 5.22 to 5.26 on multiple appeals). Wherever possible, one panel **should** hear all the appeals for a particular school.

Duty to advertise for lay members

2.7 Under the [2005 Regulations](#), bodies responsible for constituting appeal panels **must** advertise for lay members every three years. The advertisement **must** be placed in at least one local newspaper and allow a minimum of 21 days for replies. Admission authorities **should** also consider other ways of attracting potential members e.g. flyers in local newspapers or approaches to local companies. It can also be helpful at this stage to make it clear that training will be provided. In some areas, LAs (with agreement of other admission authorities) take responsibility for recruitment, training and appointment of all members to appeal panels. This is a cost-effective way to achieve consistency across an area.

Training of panel members

2.8 Admission authorities **must not** let panel members and clerks participate in appeal hearings before they have received appropriate training. Admission authorities **should** ensure that experienced panel members are kept abreast of relevant court rulings and guidance and are given regular refresher training at least every 3 years. Local Authorities **should** invite voluntary aided and foundation schools appeal panel members to any training they may provide for their own panels. Panel chairs **should** have, specific up to date, training on chairing a panel, so that they conduct the hearing properly and make correct and effective use of the clerk. Regular refresher training **should** also be provided for these individuals.

Length of time members can serve on a panel

2.9 The law does not restrict the length of time panel members may serve, but the admission authority **must** regularly review panel membership. It is good practice for panel members hearing appeals for a particular school to be changed regularly (e.g. every 3 years, to tie in with the duty to advertise for lay members) to prevent the appearance of bias towards the admission authority. Pooling resources with neighbouring admission authorities and LAs can help ensure that the same members do not sit on panels for a school on a repeated basis.

Indemnity

2.10 Admission authorities **must** indemnify the members of any appeal panel against any reasonable legal costs and expenses they reasonably incur in connection with any decision or action taken by them in good faith whilst acting as members of the appeal panel⁴⁵.

Responsibility for appeal panel costs

2.11 LAs **must** allocate reasonable funds to governing bodies of schools which are admission authorities, to meet admission and admission appeals costs, unless the school and LA agree that the LA itself should carry out the administration on the governing body's behalf. It is for the LA to decide whether these funds should be allocated to the schools as earmarked allocations which are additional to, and separate from, their budget shares. If the LA decides to delegate funding for admissions functions, it **must** comply with the requirements of the Regulations governing school funding formulae made under section 47 of the 1998 Act.

Allowances for appeal panel members

2.12 Under Regulation 7 of the [2005 Regulations](#), panel members are eligible to receive travel and subsistence allowances, in line with sections 173 and 174 of the [Local Government Act 1972](#). They can also be compensated for any loss of earnings that arises as a result of attending an appeal panel. This payment is set by the LA having regard to the recommendations of its independent remuneration panel, as provided for in the [Local Authorities \(Allowances for Members\) \(Wales\) Regulations 2007](#).

2.13 These provisions apply where appeals panels are arranged either by the LA or by the governing body of the school. The governing body may pay expenses at the rate set by the LA which maintains the school.

Interests of appeal panel members

2.14 Paragraph 2.3 specifies people disqualified from being a panel member by the [1998 Act](#). However, there may be cases where it would not be appropriate for somebody to become a member, even if not disqualified from doing so by the [2005 Regulations](#). Discretion and common sense should be used when making such judgements. Examples of this could be where somebody has an interest in the outcome of an appeal - for example the governor of any school children of unsuccessful appellants might attend, or a panel member who is also an unsuccessful applicant for the school in question. Another example might be a parent with a child at the school, who although not disqualified from being a panel member, might be objected to by an appellant because of their connection with the school.

⁴⁵ Regulation 8 of the [2005 Regulations](#).

2.15 Care should be taken to avoid bias, or the appearance of bias, in choosing members of a particular panel. Any person married to, closely related to or involved with an appellant (parent or child) **must** be excluded from membership of the panel that will hear their case. This would also apply to people who are employers or employees of the appellant. Also, a person married to, closely related to, or otherwise involved with a person excluded from panel membership **should not** normally be a panel member and partners in a personal relationship **should not** normally serve on the same panel. In general, any appeal panel member who is known to have particular views about the appellant - good or bad - could be regarded as not being impartial. If there is likely to be any doubt raised by an appellant about the impartiality of a particular person, then they **should not** sit as a panel member at that hearing.

2.16 When panel members receive their papers for the appeal, they **must** notify the clerk to the panel if they know any of the appellants so that the appropriateness of their presence on the panel can be considered. It is possible that a panel member may only realise on the day of the hearing that he or she knows the appellant. In those circumstances, the panel member **must** disclose the fact. The appellant **must** be asked whether he or she is content that the appeal should continue but if concerns are raised the panel member concerned **must** stand down and take no part in the decision for that appeal.

2.17 Where possible it is good practice to inform appellants in advance of the names of panel members and whether they are serving as a lay member or a person with experience in education, so that they can raise any doubts as to the impartiality of particular panel members before the hearing itself. However, it **should** also be pointed out that panel membership may be subject to a late change if this is unavoidable e.g. because of sickness.

Ensuring that there is a quorum of panel members

2.18 Where a panel with five members has begun considering an appeal and any of the members is unable to continue or has to withdraw, the panel may continue to sit, provided that there are not fewer than three remaining members and they still have at least one lay member and one education member. If not, a new panel **must** be convened to hear the appeal. Where a panel starts with three members, it **must not** continue if one member has to withdraw, in which case a new panel must be constituted to hear all cases afresh.

Chapter 3 – Roles and responsibility

3.1 Every person involved in an admission hearing **must** be familiar, and “act in accordance with” both the School Admissions and School Admission Appeals Codes and **must** have an appropriate level of training. The specific roles and responsibilities are detailed below.

The clerk to the panel

3.2 Each panel **must** have the services of a clerk. The clerk is not a member of the panel but has an important part to play in ensuring that relevant facts are established, compliance with regulations is maintained and that the appeal hearing is fair.

3.3 The clerk **must not** have played a part, nor had an interest in, the decision which is subject to appeal. Clerks **must not** deal with admissions as part of their normal employment. However clerks **must** have a good understanding of this Code and the law on admissions and **should** have received appropriate training that includes the equality law. If this is not possible the panel **must** have access to legal advice. LAs and governors **should** normally look outside their own staff for people who have relevant experience working as a professional committee clerk or legal advisor or who have experience in the conduct of enquires or disciplinary hearings. Admission authorities may share clerks.

3.4 The clerk’s key tasks are to:

- Make the necessary administrative arrangements for hearings.
- Explain the basic procedures to appellants and deal with any questions they may have at the start of the hearing.
- Ensure that the relevant facts, as provided by both the appellant and the admission authority, are presented and recorded at the hearing.
- Be an independent source of advice on procedure, the Codes and the law on admissions (usually giving advice in the presence of all parties to the appeal), and tactfully intervene to assist the panel with procedure, if necessary.
- Record the proceedings, attendance, decisions, voting outcomes and reasons. This record does not need to be verbatim, but **must** be a clear and comprehensive record of all the points raised at the appeal, making it clear what view the panel took about important points raised by the appellants.
- Notify all parties of the panel’s decision in writing.

3.5 If the panel withdraws or invites the parties to do so while it considers its decisions, the clerk **must** remain with the panel but only for the purpose of offering advice on procedure or law. He or she can assist by reference to notes of evidence, and by recording decisions and the reasons for them. Where further advice has been offered the clerk **should** consider whether it is necessary for this to be repeated to the other parties and for them to be given the opportunity to comment on it.

The chair

3.6 The chair plays a central part in directing the proceedings and **must** be able to control the hearing fairly and firmly. Experience as a magistrate, committee chair, senior union official or the like would be valuable. The chair **should** aim to put the appellants at ease and ensure the hearing is conducted in an informal but structured manner. He or she **should** start proceedings by introducing all the people at the hearing and explaining the role of the clerk. The chair **should** explain at the start that the panel is independent and that if it upholds the appeal, the decision will be binding on the admission authority. The chair **should** conclude the hearing by asking the appellant if they have been able to raise all the issues they wished to and if there are any additional points they would like to make.

The panel members

3.7 All members of the panel need to be aware of the order of the proceedings and play an active part in the questioning of both the presenting officer and the appellant. They **must not** favour either party and **should** be conscious at all times of acting, and being seen to act, independently of the LA or the school's governing body. Panel members **must not** express personal opinions during the course of a hearing or make the case for either party.

The appellant

3.8 The appellant is appealing over a matter that is very important to his/her (in the case of a young person appealing a sixth form admissions decision) or the child's future. It is recommended that where an appellant or his representative are unfamiliar with admission appeal hearing procedures, the Chair of the panel adopts an "enabling" role in these instances to assist parents and young people to put their case. Admission authorities **must** give appellants appropriate guidance and information before the hearing to enable them to prepare their case for appeal. Appellants are entitled to question the presenting officer during the proceedings. The role of the appellant at the appeal hearing is a particularly difficult one and this **should** be taken into account at all times by the panel.

The presenting officer

3.9 The admission authority **must** provide a presenting officer who is responsible for presenting their decision not to admit the child/young person as clearly as possible, giving all the relevant information. The officer **must** be prepared to answer detailed questions about the case being heard and the questions about the school and its admission arrangements, and will need to be present throughout the hearing to be able to do so. The presenting officer **must** be fully trained in admission appeal procedures.

3.10 The presenting officer **should** be sufficiently prepared to present the case to make it unnecessary for a representative of the school to attend the hearing. Headteachers or other representatives of the school should not attend appeals

hearings other than in exceptional circumstances, and only where necessary to answer questions put to them about the school.

Administrative Justice and Tribunals Council (AJTC)

3.11 The AJTC has an automatic right to attend a panel as an observer. They may also direct that any person may attend a hearing of an appeal for training or appraisal of the performance of the Clerk or appeal panel members.

Chapter 4 – Action before the appeal hearing

Right of appeal

4.1 Any parent (except one whose child has been permanently excluded from two schools) whose child is refused any school place, or young person who is refused a place in a school sixth form, has a statutory right of appeal to an independent appeal panel (this right of appeal does not extend to applications for nursery education). Parents or young people who have had an offer of a place withdrawn also have a right of appeal.

4.2 If a child/young person is refused entry to a school/sixth form, parents (and young persons in the case of sixth form admissions **must** receive, in writing, full reasons why the application was unsuccessful, with reference to the published admissions arrangements for the school, including whether the refusal is because of the infant class size limit. The letter must inform them of their right to appeal, including details of how to make an appeal (a pre-printed form can be used) and the person to whom they should send their notice of appeal. Details of where to obtain further information and the right to attend the appeal hearing **must** also be given. Any deadlines for the submission or receipt of information **must be** specified. Although it can be useful, in particular for infant class size appeals, to outline the limited circumstances under which the panel may uphold an appeal (see Annex C) letters **must not** comment on the likelihood of success.

Notice given by parents/young persons that they intend to appeal

4.3 Parents/young persons **must** be allowed at least 14 days (10 working days) from the date of notification that their application was unsuccessful to prepare and submit their written appeals. To avoid any doubt that an appeal request has been received, admission authorities **should** consider issuing acknowledgments. If parents/young people submit a late appeal because of difficult circumstances or because they did not understand what was required, admission authorities **must not** unreasonably refuse to accept a late appeal. A late appeal **should** be heard at the same time as, or as soon as possible after, any other appeals for a particular school. Wherever possible, the appeal panel hearing any late appeals **should** consist of the same members. Hearings **must not** take place before any specified deadline for appeals to be submitted.

Notice given to appellants of the date for the appeal hearing

4.4 Appellants **must** be given at least 14 days (10 working days) written notice of the date of their appeal hearing, unless they have agreed to a shorter period (if appellants agree to a shorter period of notice, they should confirm this with the clerk to the panel in writing, including e-mail). Where, in the case of sixth form admissions, both the young person and his/her parents appeal against a decision, those appeals **must** be heard together.

Information for appellants about appeals

4.5 It is useful for admission authorities to prepare guidance for appellants on appeals, based on their knowledge of their own local circumstances. LAs and governing bodies who are responsible for arranging appeals may consider producing a joint set of guidance for appellants in their area. Some of the information contained in this Code **should** serve as a basis for such guidance. It would also be helpful to include a contact point for enquiries about the appeals process. It is particularly important that LAs and governors inform appellants that they have a right to attend their appeal hearing.

4.6 When informing them of the date of the appeal hearing, the admission authority **must**:

- Ask appellants to provide as soon as possible any documents, information and evidence they wish to submit to the panel to support their case, but informing them that they may submit information at any time before the hearing.
- Make clear whether any earlier correspondence between the appellant and the school will automatically be included in the panel's papers, or only those documents which the appellants have submitted specifically for the appeal hearing.
- Notify them of the grounds under which the appeal is to be considered, for example, by outlining the limited scope under which an infant class appeal may be upheld for classes of 30. If it is not clear whether the appeal is on infant class size grounds, or normal prejudice, appellants **must** be advised to prepare for both.

4.7 To allow appellants to prepare for the appeal hearing, the admission authority **must** also provide them with the following information at least 3 working days before the hearing:

- Names of the panel members and clerk, with the caveat that these may be subject to change due to unavoidable circumstances, and in what capacity they are serving (see paragraph 2.2). This is to give appellants (and other parties) the opportunity to raise any doubts as to the impartiality of particular panel members before the appeal hearing.
- All the information reasonably asked of it by the appellants. Notification of whether any witnesses have been invited to give evidence at the hearing (see paragraphs 4.16 and 4.17).

The admission appeals timetable

4.8 Admission authorities **must** arrange their appeals timetable so that appeals made during the timetabled admissions process are heard within 30 school days of the specified closing date for the receipt of appeals. Appeal hearings for appeals made outside the timetabled admissions process **must** be held within 30 school days of the appeal being received in writing. During the summer holidays admission

authorities **must** arrange to hold their appeals within 30 working days of the appeal being received in writing.

4.9 To prevent unacceptable delays, admission authorities may wish to make joint arrangements to hear appeals relating to casual applications. Admission authorities **should** publish a timetable of events in advance, including the period when appeals for the timetabled admissions process are expected.

4.10 Planning well in advance is helpful in ensuring that one panel hears all the appeals for a particular school unless there are exceptional reasons why this cannot be done. It is good practice to canvass appeal panel members and to arrange provisional dates and venues for hearings well before the offer date. When the precise number of appeals is known, the dates can be confirmed with panel members. It is always possible that illness or other reasons mean a panel member may have to drop out at short notice and admission authorities **should** include some potential substitutes in their forward planning. A good practice is to plan on the basis of having more appeals than in previous years, as it is easier to cancel arrangements than it is to arrange additional hearings.

4.11 Parents are not statutorily obliged to send their children to school until the start of the term after their fifth birthday and the Code on School Admissions requires admission authorities to agree applications for deferred entry to reception classes. Appeal panels **must** ensure that all appeals made within the timetabled admissions process are heard at the same time, regardless of the term in which the child is expected to enter the school.

Notifying the AJTC of dates for appeal hearings

4.12 The AJTC has an overseeing role in respect of admission appeals and its members sit in on appeal hearings (including the panel's post-hearing deliberations) from time to time as observers. This is an important part of the AJTC's work which enables it to take an overview of appeals. Admission authorities **must** notify the AJTC of dates on which appeal hearings will take place so that it can arrange if necessary, for one of its members to be present. The AJTC's address is at Annex E.

Representation

4.13 Appeal panels **must** allow appellants the opportunity to appear in person, to make oral representations⁴⁶ and to clarify or supplement their written appeal. It is important to try and arrange a time and a place for the hearing which will enable them to do so. If it is not possible to offer an alternative date, as may be the case in multiple appeals, the appeal will have to be decided on whatever written information is available and this **must** be explained to the appellant.

4.14 The appellant may be accompanied or represented by a friend, adviser, interpreter or signer⁴⁷ who may speak on the appellant's behalf. An independent advocacy service could be used if necessary. Legal representation **should not** be

⁴⁶ Paragraph 1(4) of schedule 2 to the [2005 Regulations](#).

⁴⁷ Paragraph 1(4) of schedule 2 to the [2005 Regulations](#).

necessary for admission appeals, although appellants are free to have such representation if they wish. Panels **must** however be careful to ensure that unrepresented appellants are not treated differently from those that have representation. If appellants intend to be represented, or accompanied by a friend or adviser, or to bring an interpreter or signer, they **should** let the clerk know in advance. Admission authorities should provide interpretation or signing facilities if requested.

4.15 Appellant's must be notified that they **must not** be accompanied by a member of the Council, an LA officer or a local politician, as this may lead to a conflict of interest, unfairness to other appellants and place undue pressure on the panel.

Evidence and witnesses

4.16 Appellants and presenting officers are entitled to decide how to organise their presentation but it is unlikely to be necessary for witnesses to attend. The panel may consider it appropriate to allow witnesses who do not attend to give evidence, provided that it is relevant and not repetitive. Panels may (with advance warning to the appellants) ask for corroboration from them on matters such as medical conditions or their address. It **should not** be necessary for a **head teacher** or **governor** to act as a witness, as it is for the presenting officer to provide information about the school.

4.17 If the child wishes to appear at the hearing to give evidence, provision **should** be made for him/her to do so and the conduct of the panel should reflect that a child is present. It may also be necessary for training to be provided in appropriate chairing skills for managing hearings where children are present.

4.18 It is for the panel to decide whether any witness, having given evidence, **should** remain for the remainder of the presentation of the case. This may assist the informality of the proceedings but it may not always be desirable.

The venue for the appeal

4.19 Given the emphasis on independence in the appeals process, a neutral venue **must** be used for the appeal hearing, but LAs could use their own buildings so long as they are not associated with the work of admissions staff. Funding delegated to admission authorities for appeals **must** cover expenses such as this, although LAs may be able to provide a suitable venue, if schools prefer. Venues for hearings **must**:

- be accessible to the appellants
- have adequate sign-posting
- be accessible by public transport

- be accessible for people with disabilities⁴⁸ (with consideration given to the provision of spaces for car parking)
- have a suitable waiting area for appellants, which separates them from the panel and presenting officer and
- have a suitable room for the presenting officer to wait away from the panel before and between appeals.

4.20 Other points to consider are that:

- there **should** be room to allow parties and their representative or advisor to have private discussions
- the hearing **should not** be interrupted by noise outside or people entering the room
- those waiting outside **should not** be able to hear what is going on inside
- the room layout **should** ensure structure, comfort and informality
- drinking water or other refreshments **should** be available
- toilets **should** be conveniently located, including disabled toilets
- there **should** be name plates for the panel and the clerk, and
- adequate time **should** be allowed for the hearing, especially if an interpreter is present to act on behalf of the appellants.

“Lobbying” of panel members

4.21 Out of fairness to the other appellants, members **must not** be drawn into any discussions with appellants before their hearing. They **should** remind appellants that any additional information that they wish to add to their appeal **should** be presented in writing before the hearing and they will have the opportunity to have their say when the hearing takes place. In addition, panel members **must not** be drawn into discussions with members of the admission authority before the hearing and they **should not** take refreshment breaks during the course of the day with the admission authority representatives. The same considerations apply to clerks, except where the appellant or admission authority representative wishes to ask a procedural question.

Preparation and production of evidence by the admission authority prior to the hearing

4.22 At least 7 days (5 working days) before the hearing (unless appellants have waived their right to a period of 14 days notice of their appeal) - see paragraph 4.4 - the admissions authority **must** supply the clerk of the appeal panel and the appellants with the following documents (documents may be sent electronically but only with the agreement of all the parties concerned):

⁴⁸ Guidance is available from the Administrative Justice and Tribunals Council in their document [‘Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act’](#).

- A written statement summarising how the admissions arrangements for the school apply to the appellant's application, with any relevant background information together with any documents on which they placed substantial reliance (such as the appellant's application form or references from religious ministers).
- A written statement summarising the reasons for the decision, explaining how admission of an additional child/young person would cause prejudice to the efficient education or use of resources whether or not the admission authority is defending its decision on the basis of infant class size legislation. Any statement referring to accommodation, class sizes, capacity, etc **should** be supported by factual written information such as the school capacity calculation proforma, as panel members cannot be led on 'tours' of schools to make their own assessments, which could call into question their independence and lead to allegations of lobbying.
- Copies of any information or documents which are to be put to the panel at the hearing, including anything which at that point has been submitted by the appellants.

4.23 There **should** be no grounds for the admission authority to produce substantial new information at the appeal.

4.24 The admission authority **must** provide all the information reasonably asked of it by the appellants, including an up to date capacity calculation proforma, so that they are in a position to question the admission authority's case. Appellants may produce any additional information or evidence that they feel supports their case. The clerk's role does not include sifting out what they might consider inappropriate material; it is for the panel to decide whether or not to take account of what is submitted.

4.25 The clerk **must** ensure that all documents listed in paragraph 4.22 are sent to panel members by post or delivery by hand, at least 3 days before the hearing.

4.26 The clerk **must** notify the appellants and presenting officer of the order of business in advance of the hearing (see paragraph 5.3 for suggested order).

Chapter 5 – The appeal hearing

Nature of the hearing

5.1 Appeal panels **must** operate according to the principles of natural justice, and the conduct of hearings **must** be based on fairness and, as far as possible, create an informal atmosphere. Informality will be difficult to achieve if, for example, the hearing is tape-recorded and this **should** be avoided except where this may help an appellant with a disability.

5.2 Appeals **should** normally be heard in private, unless being heard as a multiple appeal (see paragraphs 5.22 to 5.26)⁴⁹. All parts of the proceedings **must** take place in the presence of all the panel members and parties, unless the appellants are unable to attend. One party **must not** be left alone with the panel in the absence of the other party where both parties are attending the hearing. More detailed guidance on the nature of appeal hearings, including the principles of natural justice, is given in Annex B to this Code.

The order of the hearing

5.3 A suggested order is set out below:

- the case for the admission authority
- questioning by the appellants

(If prejudice is not proven, the hearing **should** end at this stage and the appellant **should** be told their appeal has been successful)

- the case for the appellant
- questioning by the admission authority
- summing up by the admission authority
- summing up by the appellant

5.4 At the start of the hearing, the panel chair **must** welcome the parties and introduce the panel members and the clerk. The chair **must** also introduce the presenting officer and the appellants, treating each equally. Even if the presenting officer is known to the panel through their attendance at a number of hearings, care **should** be taken to avoid giving any impression that the panel and presenting officer are working together. The procedure **should** be explained clearly and simply by the panel chair, giving details of the issues which the panel will be addressing and in what order. The two stage process (see paragraph 5.14) or limited scope of an infant class size appeal **should** also be explained clearly to the appellant, as appropriate. The chair **should** explain that the panel is an independent body and that if it upholds the appellant's appeal, the decision will be binding on the admission authority.

5.5 The panel members may ask questions at any time if they require clarification of what is being said or if they need information in order to reach a

⁴⁹ Paragraph 1(5) of Schedule 2 to [the 2005 Regulations](#).

decision. At no point **should** panel members attempt to answer questions for the presenting officer, as this could give the impression that they are working together.

5.6 If substantial new issues are raised for the first time at the hearing, an adjournment may be necessary to allow any party taken by surprise to consider the issues. Parents should be informed that if they present information at the appeal which needs checking, the appeal may have to be reconvened following an investigation of the issues raised.

5.7 The procedure may have to be adapted in multiple appeals (see paragraphs 5.22 to 5.26).

Statutory matters to be taken into account by the appeal panel

Parental preference

5.8 Appeal panels must take into account the general duty of an admission authority to comply with parental preference (or in the case of a sixth form admissions the preference of a young person) subject to the exception set out in paragraph 5.9. They should also consider whether a place was refused in error, or as a result of admissions arrangements contrary to mandatory provisions in the School Admissions Code and legislation.

5.9 Admission authorities **must** comply with applications for admission except in the following circumstances:

- Where to admit the child would prejudice the overall provision of efficient education or the efficient use of resources. (Admission authorities may not refuse to admit children or young persons to any year group in which pupils are normally admitted to the school on these grounds unless the number of applications for places in that relevant year group exceeds the school's admission number.) Prejudice may arise by reason of measures required to be taken to comply with the limit on infant class sizes (this is known as class size prejudice - see paragraphs 5.10 to 5.12 and Annex C).
- Where a sixth form is wholly selective by high ability or by aptitude and the admission of the pupil would be incompatible with such selection under admission arrangements.
- Where a state maintained boarding school has set separate admission numbers for day pupils and boarding pupils and has more applicants for one or other category than places available, even though places may be available in the other category.
- Where the child has been excluded from two or more schools and the latest exclusion took place within the last two years. This does not apply to children below compulsory school age, pupils who have been reinstated after exclusion, or those who would have been reinstated had the reviewing governing body or exclusions appeal panel considered it practical to do so in the circumstances. A permanent exclusion is regarded as taking effect from the first school day the headteacher has told the pupil not to attend the school.

Infant class sizes

5.10 Statutory limits on class sizes provide that, subject to certain limited exceptions, infant classes (reception, Year 1 and Year 2) may not contain more than 30 pupils. The limited exceptions are described in detail in paragraph 3.47 of the School Admissions Code. It is important to draw a distinction between infant class size legislation and admission numbers, as normal prejudice could arise on occasions when class size prejudice might not.

5.11 An admission authority can refuse to admit a child to a school where to do so would cause class size prejudice⁵⁰, that is to say, prejudice to efficient education or efficient use of resources as a result of the measures that would be needed to comply with the duty to limit the size of infant classes. However, in relation to the reception year such prejudice can not be said to arise unless the schools admission number would be exceeded. In relation to years 1 and 2 admission authorities should not normally refuse admission on the grounds of class size prejudice unless the schools admission number when applied to those years would be exceeded or difficulties would arise in the organisation of classes.

5.12 Whilst there is no legislation for Key Stage 2 classes to be 30 or fewer this is the preferred class size target for the Welsh Government.

5.13 The scope of an admission appeal panel to uphold an appeal against non-admission is limited where the admission authority has refused admission on class size prejudice grounds. An appeal panel will be able to uphold an admission appeal only if the decision was not one which a reasonable admission authority would make in the circumstances of the case or the child would have been offered a place if the admission arrangements had been properly implemented. Annex C provides further detail about this.

Process

5.14 A two stage process **must** be applied in the case of all 'prejudice' appeals except where class size prejudice is an issue.

5.15 The courts have held that the two distinct stages **should** be:

- i) **a factual stage** for the panel to: a) consider whether the published admission arrangements comply with the mandatory requirements of the School Admissions Code and that they were correctly and impartially applied and b) decide as a matter of fact whether 'prejudice' would arise were the child or young person to be admitted.
- ii) **a balancing stage** for the panel to exercise its discretion, balancing the degree of prejudice and the weight of the appellant's case, before arriving at a decision.

5.16 If the panel does not consider that the admissions criteria for the school comply with the mandatory requirements of the School Admissions Code and/or

⁵⁰ School Admission Code, paragraphs 3.40 to 3.43.

correctly and impartially applied to the pupil concerned it must decide whether proper application of the criteria would have led to his/her acceptance. If that is so, the panel **must** uphold the appeal and not go on to the second stage.

5.17 Similarly if the appeal panel is not satisfied at the first stage that there would be prejudice if the child or young person were admitted to the school, where there is only a single appeal for the school, the panel **must** allow the appeal (but for multiple appeals for the same school see paragraphs 5.22 to 5.26).

5.18 In order to establish whether or not there is prejudice the panel will wish to consider a number of factors, including the school's indicated admissions number derived from the capacity of the school, calculated using the Welsh Government capacity assessment formula. The method is set out in the guidance document '[Measuring the capacity of schools in Wales](#)', which is available on the Welsh Government's website at www.wales.gov.uk. The capacity assessment takes account of the wide variety of teaching styles and room layouts that are found in schools across the country. In limited circumstances, subject to local consultation, admission authorities are allowed to set a lower number than that indicated by the capacity assessment if, for example, the school is a split site school and it is appropriate to do so. It is not the role of the panel to reassess the capacity of the school as this should have been agreed locally, based on an objective assessment of the space available. The panel **should** consider instead the impact on the school of admitting additional pupils in terms of the organisation and size of classes, the availability of teaching staff and the effect on the pupils already at the school. They may also consider the impact that admitting additional pupils might have on other schools in the area and whether this would prejudice the provision of efficient education or the efficient use of resources.

5.19 In the case of new schools serving a new housing development, the panel **should** take into consideration that whilst such schools could appear to have spare capacity, the admission authority may have initially set lower admission numbers for the first and subsequent years, and would have made that clear in the published and approved statutory proposals for the new school. This usually occurs when admission authorities plan to phase in the numbers of places available over a period of time. It is important that presenting officers highlight these issues when stating their case, clearly explaining the need to phase in the number of admissions and the effect of those plans on a large number of children admitted, for example, where the school has not been allocated sufficient funding for the extra teachers needed.

5.20 Where the admission authority is able to satisfy the appeal panel that there would be prejudice, the appeal panel **should** go on to the second stage and consider the appellant's reasons for preferring the particular school. The panel will need to consider the consequences for the admission authority in complying with the appellant's wishes and how serious those consequences would be for both the authority and the other children/young persons.

5.21 It is open to the admission authority concerned to present as part of its evidence to the panel the fact that the child or young person in question has been offered a place at an alternative school. This may be of particular relevance where the question of distance between home and school is being discussed. Equally, it is

open to the appellant to state any reasons why an alternative school would be unsuitable or less suitable.

Multiple appeals

5.22 Appeal panels will sometimes be required to handle appeals from a number of appellants in relation to the same school. In these circumstances one appeal panel comprised of all the same members **should** consider all the appeals. Appeal timetables **should** be arranged so as to ensure that this is possible (see also paragraphs 4.8 to 4.11) in relation to applications received during the timetabled admissions process.

5.23 Where multiple appeals are being heard, decisions **must not** be made on individual cases until all appellants have been involved in stage 1 and stage 2 of the process or an injustice could result. Careful note-taking by the clerk to the panel is important in these circumstances. However, appeal panels need to take account of circumstances where an appellant asks to be heard later than the time arranged. If the gap is significant, it may not be reasonable to hold up decisions for the majority.

5.24 If there are exceptional circumstances, and more than one panel has to consider appeals for the same school, each panel **must** make its own decisions absolutely independently, since decisions can only be taken by members who hear the appeals and only on the basis of the evidence put forward in the appeal hearing in the presence of both parties.

5.25 As with other appeals, multiple appeals are heard in two stages:

First: the panel **must** assess a) whether admitting all the appellants would cause prejudice to efficient education or the efficient use of resources and b) whether each child or young person would have been offered a place if the admission arrangements had been properly implemented. If the panel finds that admission of the appellants would not cause prejudice or that they would have been offered a place if admission arrangements had been properly applied, their appeals **must** be upheld.

If the panel decides that some further children or young people could be admitted without prejudice to the school, it **must** then determine how many could be admitted and allow appeals up to that number. In considering which appeals to allow, the panel **must** first admit those who should have been admitted if the admission arrangements had been properly applied, and then consider the other factors in the individual appellant's case so that any compelling reasons for admission which the appellant presents can be taken into account.

If prejudice is found, and where there are remaining appellants, the panel **must** move to the second stage of the appeal; deciding whether any of the individual appellant cases outweigh the prejudice.

Second: if the panel decides that admission of additional children or young persons would result in prejudice, it **must** consider, for each individual case, whether the

appellant's grounds for admission to the school outweigh such prejudice. This involves no comparison between appellants' cases.

However, if there are several cases which outweigh the prejudice to the school and merit admission, but the panel determines that the school could not cope with that number of successful appeals, the panel **must** then compare cases and decide which of them to uphold.

5.26 Appeal panels may wish to deal with multiple appeals in one of two ways:

Grouped appeals: where the presenting officer's case in respect of a school is heard once for the first stage of the appeal. In this scenario the presenting officer presents a general case (the factual stage) in the presence of all appellants (and any representatives) who may question the case. If the panel concludes that 'prejudice' exists, it will be necessary to move to the second stage. At this stage the appeals of the individual appellants **must** be heard individually without the presence of the others and decisions **must not** be taken until all the appeals have been heard.

Individual appeals: where the presenting officer presents the case, followed by the individual appellants' cases, as in the order of the hearing set out in paragraph 5.3. In these circumstances, it will be necessary for the panel to hear the admission authority's case repeatedly. In the first stage, where the admission authority is arguing that prejudice would arise, the case will always be the same. The admission authority **must not** produce new evidence, or expand upon its case as the appeals proceed, because appellants earlier in the process will not have had an opportunity to consider that evidence and respond accordingly. The clerk **should** explain at the start of the hearing that the admission authority may not do this. If, however, material new evidence comes out in the questioning of the admission authority's evidence, the clerk **must** ensure that the appeal panel considers what bearing the evidence may have on all the appeals and **should** decide how to advise the panel so that it deals with all the appeals fairly. This may entail adjourning the appeals to give appellants the opportunity to consider and challenge the new evidence.

Notes or records of proceedings

5.27 In addition to the notes taken during appeals to assist the panel's decision-making process, the clerk **must** ensure complete and accurate notes of the proceedings are made, the attendance, the voting and the decisions (together with the reasons for these decisions) in such form as the panel and clerk may agree is appropriate. Notes of the proceedings may be typed or hand-written and **should** be clear.

5.28 Such documents are the property of the appeal panel and **should not** normally be available to the other parties. However, there may be occasions where the notes **should** be disclosed and they **must** therefore be prepared and retained on the basis that they may be released. These may include situations where:

- a. a request has been received from the Public Services Ombudsman for disclosure as part of his or her investigation of a complaint about the conduct of an appeal, or

- b. disclosure is required as part of court proceedings, for example, where a panel's decision is challenged by judicial review.

5.29 As tribunals under the direct supervision of the AJTC, appeal panels are not subject to the [Freedom of Information Act 2000](#) (FoIA). Where the notes are, for administrative purposes, held by an admission authority which is subject to the FoIA, for example, where a LA's legal department retains the notes on file or the notes are retained in a school office - there is no obligation for the admission authority to comply with a request for copies of the notes under the FoIA. In this situation the admission authority will either (a) be holding the notes on behalf of the panel, in which case the notes will not be held by the authority for the purposes of the FoIA or (b) they will fall within the exemption applying to court or tribunal records.

5.30 If a request is made for access to personal data contained in the notes under the [Data Protection Act 1998](#), whether that data should be disclosed will depend on a number of factors including: the identity of the person making the request; the nature and individual circumstances of the appeal; the way in which the data is held and the interests of any third parties identified in the data. Panels or clerks may therefore wish to obtain their own advice before responding to such a request.

Applications outside the normal year of entry

5.31 When considering applications to years other than the normal year of entry, admission authorities will rarely be able to prove 'prejudice' as a ground for refusing an additional pupil while the number of pupils in the year group to which entry is sought remains below the current admission number for the school.

5.32 As in other cases of refusal, where parents or young persons are unsuccessful in applying for a school place for these years, they **must** be informed why their application was not successful as well as of their right to appeal against this decision.

Partially selective schools

5.33 A partially selective school **must** admit up to its admission number and **must not** keep selective places empty.

Waiting lists

5.34 Panels **should** take no account of where the admission authority has placed a child on the waiting list, or that the parents of other children on the waiting list may not be appealing.

Children with statements of special educational needs

5.35 Admission to schools of children with statements of SEN is covered in paragraphs 3.49 to 3.50 of the School Admissions Code and schedules 26 and 27 to the [1996 Act](#). Where a school is named in a statement, the governing body has a duty to admit the child to the school.

5.36 If the parent of a child with a statement of SEN wishes to appeal against the school named in the statement or the fact that no school has been named, the appeal **must** be made to the SEN Tribunal in Wales, not an appeal panel.

Children with special educational needs but without statements

5.37 Pupils with SEN but without statements **must** be treated no less favourably by admission authorities of mainstream schools than other pupils. Admission authorities **must not** refuse to admit a pupil because they consider themselves unable to cater for his or her SEN. In addition, they cannot refuse to admit a pupil on the grounds that he or she does not have a statement of SEN or is currently being assessed for one.

5.38 If a child is going through an assessment process for a statement, the parents may wish to apply for a school place under the normal admissions procedures in case the LA concludes that the child's needs do not require a statement of SEN. If the LA decides that the child **should** have a statement of SEN then decisions about an appropriate school placement will be addressed as part of the statementing process.

Children with disabilities

5.39 Panels will hear appeals against non-admission where discrimination for a reason related to a pupil's disability is alleged to have taken place. In considering such appeals, the panel **must** take into account the Equality and Human Rights Commission's guidance in their Code of Practice for Schools. They **must**, along with their usual deliberations, consider whether the admission criteria have been correctly and impartially applied, or if the pupil has been discriminated against for a reason that relates to the disability. The SEN and Disability Tribunal will hear most other claims of disability discrimination against schools.

Reaching a decision

5.40 Appeal panels **must** either uphold or reject an appeal and **must not** uphold an appeal subject to specified conditions.

5.41 Decisions on appeals where there is not unanimous agreement **must** be reached by simple majority of votes cast. Where there are equal numbers of votes (i.e. where the panel initially comprises five members but one panel member drops out) the panel chair has a second or casting vote⁵¹.

⁵¹ Paragraph 1(7) of Schedule 2 to the [2005 Regulations](#).

Chapter 6 – After the appeal hearing

Notification of the decision to appellants

6.1 The panel **must** communicate each appeal decision, and the grounds on which it is made, in writing to the appellants and the admission authority⁵². The decision letter **must** be signed by the clerk (not someone from the admission authority) and sent by the clerk. It **should** be sent as soon as possible after the panel has made its decision and ideally within five working days, although this may not always be possible where there are multiple appeals for one school. When notifying appellants of a successful appeal outside the timetabled admissions process, appellants **should** where possible be given a date on which they or their child can start at the school.

6.2 The decision letter **must** be expressed clearly, without the use of jargon so that can be readily understood by a lay person. It **must** enable the parties to:

- see what matters have been taken into consideration
- understand what view the panel has taken on questions of fact or law which the panel had to resolve and
- know broadly why the panel has reached its decision⁵³ and, in particular, should enable an unsuccessful appellant to understand why their appeal has not succeeded⁵⁴.

6.3 The letter **must** reflect the type of appeal being considered. In the case of an infant class size appeal, it **must** explain the particular nature of the appeal and the basis upon which the panel was able to reach its decision. In the case of the other appeals, it **must** make reference to the two stage process, unless that was not followed, for example because the panel established that the admission arrangements had not been correctly applied. Where the panel was required to decide whether the admission authority had established prejudice, it **must** set out its decision and explain its reasons.

6.4 Where an appellant has raised specific, relevant factors which have been considered by the panel, these **must** be recorded in summary form in the letter⁵⁵. Where it has been necessary to obtain legal advice, this **must** be summarised in the letter, especially if this advice was received after the panel retired to make its decision⁵⁶.

⁵² Paragraph 1(10) of Schedule 2 to the [2005 Regulations](#).

⁵³ R v Birmingham City Council Education Appeals Committee ex parte B [1999] ELR305; R (ota I) v The Independent Appeal Panel of St Edward's College [2001] ELR 542.

⁵⁴ St Edward's College above.

⁵⁵ R (ota K and S) v Admission Appeals Panel of Cardiff County Council and Cardiff County Council [2003] EWHC 436 (Admin).

⁵⁶ R (ota I) v Independent Appeals Panel for G Technical College [2005] EWHC 558 (Admin).

6.5 If there were any issues or facts of law to be decided by the panel, for example, whether an appellant lived at a particular address, the letter **must** explain how these issues were resolved and briefly why⁵⁷.

6.6 The letter **must** explain, in sufficient detail to enable the parties to understand, the reasons for the panel's decision, addressing the key questions that the panel **must** consider. For example, in the case of a non-infant class size appeal, why the panel decided that the individual circumstances of the appellant's case were considered sufficient or insufficient to outweigh the prejudice arguments of the admission authority or, in an infant class size appeal, why the panel decided that the decision of the admission authority was one that no reasonable authority would have reached or why the admission arrangements had not been properly implemented, and, if they had been, whether and why the child would or would not have been admitted.

6.7 Whilst recognising that a degree of standardisation may be necessary, especially when dealing with a large volume of cases, every decision letter needs to reflect the individual circumstances of the particular appellant and the reasons why that appellant's appeal was either successful or not.

6.8 Where the appeal has been successful, the decision letter **should** where possible include a starting date. The clerk **must** also include a return proforma asking appellants if they will/will not be taking up the place offered and set a deadline for its return.

Fresh applications and appeals

6.9 Appellants who have appealed unsuccessfully can reapply for a place at the same school in respect of a later academic year and have a fresh right of appeal if unsuccessful. Appellants generally do not have a right to a second appeal in respect of the same school and the same academic year, but may have a fresh appeal if:

- The admission authority agrees to arrange a second appeal because there were faults in the first appeal and there is a significant possibility that the outcome might have been affected by the faults (this may be on the recommendation of the Public Services Ombudsman or because the admission authority decides to do so on its own initiative), or
- The admission authority accepted a fresh application because there has been a significant and material change in the circumstances of the parent or young person or school, but considered that the fresh application should also be turned down. Common examples are where the admission authority may wish to consider a fresh application because of changes in circumstances since the time the original application was made would be medical reasons, or that the family has moved house.

⁵⁷ St Edward's College and R (ota C) v the Appeals Panel of Nottinghamshire County Council and Nottinghamshire County Council [2004] EWHC 2988 (Admin).

6.10 To ensure that appellants receive a fair hearing, the panel that hears their second appeal **must** consist of different panel members⁵⁸, and if possible, a different clerk.

Complaints to the Public Services Ombudsman

6.11 The Public Services Ombudsman can investigate written complaints about maladministration on the part of an admission appeal panel. Maladministration covers issues such as a failure to act independently and fairly, rather than complaints where a person simply feels that the decision taken is wrong.

6.12 Where the Ombudsman, having considered a complaint about the actions of appeal panel finds out that there was ‘maladministration’ that caused injustice, one of the remedies sometimes proposed is that there **should** be a fresh appeal conducted before a differently constituted appeal panel with a different clerk. In those circumstances, the Ombudsman will recommend that the new appeal panel **should** have the same powers as the original appeal panel. The Ombudsman cannot comment on or overturn the panel’s original decision.

6.13 Although there is no further right of appeal in law, admission authorities do have the discretion to arrange a new panel following an Ombudsman’s recommendation and undertake to accept the decision.

The address of the Public Services Ombudsman for Wales is:
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ
Telephone no.: (01656) 641150

Complaints to the Welsh Ministers

6.14 The Welsh Ministers cannot review or overturn decisions of individual independent appeal panels but can consider under sections 496, 497 and 497A of the [Education Act 1996](#) whether:

- the panel was correctly constituted by the admission authority and
- the admission authority has acted reasonably in exercising functions in respect of the appeal process or has failed to discharge any legal duty in relation to that process e.g. in constituting the panel or acting in breach of the mandatory provision of this Code.

6.15 An appeal panel’s decision can only be overturned by the courts where the appellants or admission authority are successful in applying for Judicial Review of that decision.

⁵⁸ Section 25 of the [Local Government Act 1974](#).

Chapter 7 – Appeals by governing bodies against local authority decisions to admit ‘Twice excluded’ pupils (except looked after children)

Notice of appeal

7.1 When a LA takes a decision that a pupil (other than a looked after child) permanently excluded from two or more schools should be admitted to a school, the LA **must** give the governing body of the school notice in writing of that decision⁵⁹ and of the governing body’s right of appeal. An appeal by the governing body against a decision **must** be made in writing not later than the fifteenth school day after the day it is given notice and **must** give the grounds on which the appeal is being made⁶⁰.

7.2 The appeal panel will then meet on a date determined by the LA, not later than the fifteenth school day after the day on which the appeal was lodged.

7.3 There is no right of appeal against a decision to admit a twice excluded child looked after by a Welsh LA. However, if an admission authority wishes to challenge the decision to admit such a child on the grounds of serious prejudice to the provision of an efficient education or the efficient use of resources it must refer the matter to the Welsh Ministers within 7 days of the application form being received⁶¹.

Appeal panel

7.4 A person **must not** be a member of a panel if he or she has been involved in any way in previous consideration of whether the child should be reinstated at any school from which he or she has been permanently excluded. A person would also be disqualified if he or she had been involved in a previous appeal hearing relating to the child under section 95(2) of the [1998 Act](#).

The appeals procedure

7.5 The appeal panel **must** allow:

- the LA and the governing body to make written representations and
- a representative of the LA and a governor nominated by the governing body, to appear and make oral representations.

7.6 In considering the appeal, the panel **must** consider:

- the reasons for the LA’s decision that the child **should** be admitted and

⁵⁹ Section 95(20) of the [1998 Act](#).

⁶⁰ Paragraph 2 of schedule 2 along with paragraph 5 of Schedule 1 to the [2005 Regulations](#) set out the legislative requirements, relating to such appeals.

⁶¹ See regulation 7 of the [Education \(Admission of Looked After Children\) \(Wales\) Regulations 2009](#).

- any reasons put forward by the governing body as to why the child's admission would be inappropriate.

7.7 Appeals **should** be heard in private, except where the LA directs otherwise. The panel has the discretion to direct that a member of the LA may attend an appeal as an observer; and a member of the Administrative Justice and Tribunals Council may also attend any appeal.

7.8 Two or more appeals may be considered and dealt with at the same hearing, if the appeal panel considers that the issues raised by the appeals are the same or connected.

7.9 If the members of the panel disagree, the appeal **must** be decided by a simple majority vote. If the votes are equally divided, the panel chair has a second or casting vote. The decision is binding and the school and LA **must** comply with it⁶².

7.10 The decision of an appeal panel and the grounds on which it is made **must** be communicated by the clerk in writing to the LA, governing body and appellants concerned by the end of the second school day after the conclusion of the appeal hearing. The decision **should** also be conveyed to the appellants by telephone by the day after the hearing at the latest.

⁶² Section 95(40) of the [1998 Act](#).

Chapter 8 – Training of appeal panel members and other practitioners

General considerations

8.1 Admission authorities **must** arrange and fund training for appeal panel members, panel clerks, and presenting officers, both before being appointed to a panel and afterwards, to ensure that necessary skills and knowledge are updated from time to time. One effective option is to offer differentiated training for particular roles e.g. chairing skills, role of clerk or role of the presenting officer.

8.2 An individual (or more than one) **should** be identified within each admission authority as having responsibility for overseeing that training is arranged for appeal panel members and other practitioners. Admission authorities **should** consider what scope there is for co-ordinating training and LAs and governing bodies of schools will benefit from sharing information and good practice with each other. To facilitate the effective use of resources LAs **should** invite members of **all** appeal panels within their area to participate in shared training.

8.3 The Administrative Justice and Tribunals Council (which operates under the [Tribunals, Courts and Enforcement Act 2007](#)) oversees and advises on the procedures and working of tribunals, which includes admission appeals panels. The Council, along with the Judicial Studies Board, has a significant interest in the training of panel members and the role of clerks. LAs and governing bodies which are responsible for arranging appeals can seek advice from both the Administrative Justice and Tribunals Council and Judicial Studies Board about training.

8.4 With the agreement of all parties involved, the training of panel members, particularly chairpersons, could involve attendance at an appeal as an observer. Trainees **must not** participate in any part of the proceedings but are permitted to sit in on the panel's deliberations. However, experience has shown that too many people at the hearing can be daunting to appellants and the number of observers **should** be kept to a minimum. It would be best to avoid allowing an additional observer when other observers, such as a member of the Administrative Justice and Tribunals Council, may also be present.

8.5 Details of material which panel members, chairpersons, clerks and presenting officers may find helpful are set out in Annex E to this Code.

Annex A – Admission appeals: The law

Introduction

A.1 Admission authorities are responsible for arranging appeals and **must** comply with the legislation including interpretations of the law laid down by the courts, and act in accordance with this Code together with the School Admissions Code. The following paragraphs signpost the relevant legal provisions but they do not aim to provide definitive guidance on interpretation of law: that is a matter for the courts. Admission appeal panels fall under the supervision of the Administrative Justice and Tribunals Council and not the Welsh Government. The Administrative Justice and Tribunals Council (which operates under the [Tribunals and Inquiries Act 1992](#)) advises on and supervises the procedures and workings of tribunals which include appeal panels.

A.2 Admission authorities are defined in section 88 of the [1998 Act](#). For a community or voluntary controlled school, the admission authority is the LA; or the governing body if the LA has given it delegated responsibility for admission arrangements. However, even where community or voluntary controlled schools have been given delegated responsibility for admissions, the LA is still responsible for arranging appeals brought against a decision made by the governing body. In the case of a foundation or voluntary aided school, the admission authority is the governing body.

The right of appeal under the 1998 Act (as amended)

A.3 Under section 94(1) and (2) of the [1998 Act](#), parents, and in the case of sixth form admissions, young persons, have the right to appeal against an admission authority's decision refusing admission to a school. However, where a child has been permanently excluded from two or more schools and at least one of those exclusions took place after 1 September 1997, the right of appeal against a decision not to offer a school place is effectively suspended for two years after the second or any subsequent exclusion (see sections 87(2) and 95(1) of the [1998 Act](#)).

A.4 LAs **must** make arrangements for enabling an applicant to appeal against:

- In a case where the LA are the admissions authority, any decision made by or on behalf of the authority refusing the child admission to the school.
- Any other decision on or behalf of the LA as to the school at which education is to be provided for a child (see section 94(1)(a)).
- In the case of a community or voluntary controlled school maintained by the authority, any decision made by or on behalf of the governing body refusing a child admission to the school (see section 94(1)(b)).

A.5 LAs are not, however, required to make these arrangements where their decisions are in the form of directions made under section 96 of the [1998 Act](#), which empowers LAs in prescribed circumstances to direct a foundation or voluntary aided school to admit a particular child.

A.6 The governing body of a foundation of voluntary aided school **must** make arrangements for enabling an appeal against any decision made by or on behalf of the governing body refusing a child or young person admission to the school (section 94(2) of the [1998 Act](#)).

A.7 Joint arrangements may be made by the governing bodies of two or more foundation or voluntary aided schools maintained by the same LA. An LA and the governing bodies of one or more foundation or voluntary aided schools maintained by it may also make joint arrangements for appeals. These arrangements could include placing joint advertisements for lay members (see paragraph 2.7) and sharing the services of a clerk.

A.8 Parents and young people are entitled to make admission applications for more than one school. If unsuccessful they also have the right of appeal for a place at each of their preferred schools.

A.9 LAs are required, under section 95 of the [1998 Act](#), to establish appeal panels to hear appeals from governing bodies against a decision by the LA, where that is the admission authority, to admit to their school any child who falls within the category described in Chapter 7.

A.10 Where a pupil already attending a school is refused permission to transfer to the sixth form at that school, the young person or their parents have the same right of appeal under section 94(1A) and (2A) of the [1998 Act](#) (as amended by the [Education Act 2002](#)) as an external pupil or his/her parents who is refused admission to that year group. The appeal arrangements are made by the admission authority for the school.

Education (Admissions Appeals Arrangements) (Wales) Regulations 2005 (as amended)

A.11 These Regulations prescribe the requirements for the appeals procedures and for issues such as the duty to advertise for lay members, the payment of allowances, indemnity of panel members and the constitution of panels hearing appeals from either parents or governing bodies of community and voluntary controlled schools. Admission authorities are required to advertise for lay members every three years. In the case of sixth form admissions, where both a young person and his/her parents appeal against a decision, these Regulations require that those appeals are heard together.

Other relevant legislation

A.12 Panels **must** comply with all relevant legislation including the [Equality Act 2010](#). Appeal panels are also required to have regard to guidance in the Disability Rights Commission's Schools Code of Practice when determining an appeal.

The powers of appeal panels

A.13 Appeal panels cannot hear complaints or objections on wider aspects of local admissions policies and practice, such as admission arrangements determined by LAs or governing bodies. Nor do they have a role in consultations through local admissions forums. Appeal panels can consider concerns about an individual admission authority's admission arrangements raised by an appellant in the context of their appeal in so far as these may have a bearing on the child's or their admission. Panels **should not** get drawn into or allow general discussion about admission policies and practices at appeal hearings. They **should** focus on the case put forward by the admission authority for refusing to admit the child or young person and the appellants' case for admission.

A.14 Under section 94(6) of the [1998 Act](#), an appeal panel's decision that a child or young person should be admitted to a school is binding on:

- the LA or the governing body by whom or on whose behalf the decision under appeal was made, and
- the governing body of a community or voluntary controlled school at which the panel determines that a place **should** be offered to the child or young person in question.

This does not mean however that the LA may not name a school where an appeal has been unsuccessful in any subsequent direction under section 96 of the [1998 Act](#).

A.15 The Welsh Ministers have no power to consider complaints against the decisions of appeals panels or the way they conduct their business, nor has the Administrative Justice and Council on Tribunals. If appellants believe that the panel which heard their appeal acted improperly or unreasonably in handling their case, or other cases which have affected theirs, they can make a complaint to the Public Services Ombudsman for Wales (see paragraph 6.11).

A.16 An appeal panel's decision can only be overturned by the courts, where the appellants or admission authority are successful in applying for Judicial Review of that decision.

A.17 This Code requires that chairpersons and other members **must** undertake training before becoming a member of a panel; and that they **should** continue to update their skills and knowledge for the duration of their membership. More details on training are set out in Chapter 8 of this Code.

Annex B – General guiding principles for appeal panels

B.1 The following paragraphs cover the general guiding principles which **must** be applied to all admission appeals.

B.2 Appeal panels perform a judicial function. This means that they **must** operate according to the principles of natural justice and established interpretations of what this means in practice. This has implications for the way proceedings are conducted and for the behaviour of appeal panel members.

B.3 Appeal panels **must** be, and **must** be seen to be, both independent and impartial. They **must** operate in accordance with the rules of natural justice, which means being fair to all parties at all times. The principles of natural justice most directly relevant to appeals are:

- Members of the panel **should not** have a vested interest in the outcome of the proceedings or any involvement in an earlier stage of the proceedings.
- Each side **should** be given the opportunity to state its case without unreasonable interruption.
- Written material **must** have been seen by all parties. If a new issue arises during the proceedings, parties **should** be offered an opportunity to consider and comment on it.

Principles in practice

B.4 The key principles which **should** guide any appeal panel hearing are:

Independence - The overriding responsibility of an appeal panel is to act independently. The panel **must** do everything possible to ensure that both parties appearing before the panel regard them as truly independent.

Discipline - Appeal panels **must** follow interpretations of law laid down by the courts as they are part of the legal system.

Informality - Although, as stated above, admission appeal panels are part of the legal system, appeal hearings are informal. Their procedures and conduct **must**, however, ensure that both parties have a chance to say what they have to say, to ask questions which they wish to ask and to make appropriate submissions. Informality **should not** lead to a lack of structure and an even handed approach **must** be maintained.

Evidence - Appeal panels have to decide the facts of a case and then apply the law to that case. It may not always be possible to establish all the facts in full: for example, where evidence given is 'hearsay' concerning a person who is not present at the hearing. Above all, the evidence **should** be relevant and helpful to the hearing. Some evidence may be clearly unreliable and **should** be treated with caution. Where possible, appeal panels **should** try to check the evidence presented. Where there is conflict

of evidence which cannot be resolved, panels have to rely on their assessment of the reliability and credibility of the person giving the evidence. The panel may consider it appropriate to allow witnesses who attend to give evidence, provided that it is relevant and not repetitive. Panels may seek independent corroboration (with advance warning to the appellant) of matters like medical conditions or their address.

Representation - The individual making the appeal will not usually need legal representation but does have the right to bring a legal adviser or a friend along for support.

Questioning - The appeal panel may ask questions of both parties to make sure it has a complete picture. This **must** be done in an impartial way.

The effective hearing

B.5 Appeal panel members **should** read all the papers carefully before the hearing takes place and the functions which appeal panel members have to perform are:

- hearing and noting the evidence
- establishing the material facts in the light of the evidence presented
- analysing the relevant law and applying this to the facts
- coming to a decision and
- recording that decision in writing and giving reasons why that decision has been reached.

At the conclusion, all parties **should**:

- have understood the nature of the proceedings
- have been given proper opportunities to speak, put evidence forward and to ask and take questions
- feel that they have said everything they wish
- feel that they have been treated courteously and made to feel at ease
- feel the panel has been listening to, and has understood, all the points made and
- be clear as to when they are to be informed of the panel's decision.

When the decision is made known, all parties **should**:

- have understood the reasons for the decision, which **should** be expressed clearly and concisely (in writing) and
- be satisfied that, whether or not they have been successful, the hearing has been a fair one.

Annex C – Statutory limits on infant class size and implications for appeals

Introduction

C.1 Subject to certain limited exceptions, no infant class with a single school teacher present may contain more than 30 pupils. Infant classes are classes in which the majority of pupils will reach the age of 5, 6 or 7 during the school year.

C.2 Section 86 of the [1998 Act](#) sets out the circumstances in which an admission authority is not obliged to comply with an expressed preference. These include where ‘compliance with the preference would prejudice the provision of efficient education or the efficient use of resources.’ Section 86(4) of the [1998 Act](#) states that prejudice ‘may arise by reason of measures required to be taken in order to ensure compliance with the duty’ on a LA and governing body to comply with the limit on infant class sizes.

C.3 Consequently an admission authority could refuse to admit a child to a school if it considered that in order to do so and to meet statutory limits on infant class sizes, it would be necessary to take ‘qualifying measures’ for instance employing an additional teacher or building an extra classroom in either the admission year or in a subsequent year. However, in the case of a reception year group such a refusal could only be made if the school’s admission number for that year group had been reached.

Restrictions on scope of admissions appeals as a result of statutory infant class size limits

C.4 Regulation 6(2) of the [2005 Regulations](#) limits the circumstances in which an appeal panel can uphold an appeal for the admission of a child to a school where the admission authority has refused on the grounds that admission would cause prejudice as a result of the need for qualifying measures to comply with the duty to limit infant class sizes. This category of appeal can only be upheld if an appeal panel is satisfied that either⁶³:

- Ground A - that the decision was not one which a reasonable admission authority would have made in the circumstances of the case and/or
- Ground B - that the child would have been offered a place if the admission arrangements had been properly implemented.

C.5 Accordingly, infant class size appeals **should** follow the process set out below⁶⁴.

⁶³ Regulation 6(2) of the [2005 Regulations](#).

⁶⁴ The procedure for determining infant class size appeals has been considered by the Court of Appeal and High Court in a number of cases: R v London Borough of Richmond ex parte JC [2001] ELR21, CA; The School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow [2002] EWCA Civ 900; R (on the application of South Gloucestershire Local Education Authority) v South Gloucestershire

C.6 First: the admission authority **must** be able to satisfy the panel that the conditions which make the appeal an infant class size appeal apply.

C.7 It is not enough for an admission authority to show that the admission number has already been reached; it **must** be able to demonstrate what qualifying measures it would have to take to comply with the statutory class size limit if it admitted an additional child e.g. employ another teacher and that these measures would be prejudicial.

C.8 A panel **should** consider the prejudice that would be caused by the admission of an additional child - not only on the basis of the immediate situation, but also of any situation which is bound to arise in the future whilst the child is still an infant.

C.9 If the panel decides that the conditions are not met, it **should** follow the two-stage process as described in paragraph 5.14. In this event, it may be necessary to adjourn the hearing(s) so that both the admission authority and the appellant can reconsider the presentation of their cases.

C.10 Second: the appeal panel **must** consider whether the child has been refused a place in error because the school's published admission arrangements (including the co-ordinated arrangements) were not correctly applied (i.e. Ground B).

C.11 On these grounds, the panel **must** only uphold the appeal in cases where admission arrangements had not been properly implemented.

C.12 In considering an appeal under Ground B, the panel **should** take account of the material that was available to the admission authority at the time when it made its decision, or material which **should** have been available to the admission authority if it had acted reasonably. However, the panel may allow fresh material to be submitted by the appellant in order to establish the factual basis for their claim that the arrangements had not been properly implemented.

C.13 Third: (unless an appeal is upheld under Ground B): the appeal panel **must** consider, under Ground A, whether the admission authority's decision was not one which a reasonable admission authority would have made in the circumstances of the case.

C.14 In order for an admission authority's decision to fall within this ground, a panel will need to be satisfied that the decision to refuse to admit the particular child was "perverse in the light of the admission arrangements"⁶⁵, i.e. it was "beyond the range of responses open to a reasonable decision maker" or "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it"⁶⁶. Panels have no power to analyse whether the admission arrangements themselves are

Schools Appeal Panel [2001] EWHC Admin 732; and R (ota K and S) v Admissions Appeal Panel of Cardiff County Council and Cardiff County Council [2003] EWHC 436 (Admin).

⁶⁵ The School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow [2002] EWCA Civ 900.

⁶⁶ Council of Civil Service unions v Minister for the Civil Service [1984] 3 All ER 935.

unreasonable or perverse unless those arrangements are self evidently or intrinsically unlawful.

C.15 In reaching its decision, the panel **must** take into account all relevant circumstances, including:

- the reasons for the published admission arrangements
- the appellant's preference and
- the circumstances of the particular child and family.

C.16 As with Ground B, the panel **must** review the authority's decision in the light of the material available to the admission authority at the time when it made its decision. Exceptionally, a panel may also consider material which **should** have been available to the admission authority at that time if it had not acted unreasonably, for example if a parent had provided the information with their application, but the admission authority had lost it. Evidence about matters which arose after the admission authority made its decision and which the authority could not have been aware of at that time **should not** therefore be relevant. However, this does not prevent the panel allowing a letter or statement to be submitted by the appellants to show what their circumstances were at the time the decision was made in order to support their claim that no reasonable admission authority would have made that decision.

C.17 If the panel finds that the admission authority's decision was not one which a reasonable admission authority would have made in the circumstances of the case, then it **should** uphold the appeal. Where the panel finds that a reasonable admission authority would have admitted more children before class size prejudice would arise, but that there are potentially more successful appellants than it could admit without causing such prejudice, it **should** follow the two-stage process as described in paragraph 5.14. In this event, it may be necessary to adjourn the hearing(s) so that both appellants and the admission authority can reconsider the presentation of their cases.

C.18 Where there are multiple infant class size appeals, panels **should** deal with them in either of the following ways:

- a) Grouped appeals - where the admission authority's argument that prejudice to efficient education or the efficient use of resources would arise by reason of the measures required to keep to the statutory class size limit (i.e. stage 1) is heard once in the presence of all appellants. If the panel is satisfied that the infant class size conditions are met, the panel proceeds to consider the appeals of the individual appellants, without the presence of the others. The panel will therefore consider in respect of each appellant whether Ground A or Ground B applies. Decisions **should not** be made until all the appeals have been heard.
- b) Individual appeals - where the panel hears each individual appeal in the order set out above. In these circumstances, the panel will hear the admission authority's case that prejudice to efficient education or use of resources would arise by reason of the measures required to keep to the statutory class size limit, for each appeal in turn.

Other factors in considering infant class size appeals

C.19 In some areas, although admission authorities consider all applications for admission of 'rising fives' at the same time, children are admitted to reception classes at different points in the school year (e.g. September, January and April). This enables them to have due regard to infant class size legislation while not disadvantaging parents who may want to defer their child's entry to the school until later in the academic year. It also ensures that all appeals can be heard at the same time, regardless of the term in which the pupil is to enter the school. If parents decide to defer entry of their child to later in the academic year, their place **should** be regarded by a panel in the same way as if the child had already taken it up.

C.20 In limited circumstances, prescribed by Regulations, children may be admitted as exceptions to infant class size limit. These exceptions are:

- i. Children whose statements of SEN specify that they **should** be educated at the school concerned, and who are admitted to the school outside a normal admission round.
- ii. Looked after children and previously looked after children admitted outside the normal admissions round.
- iii. Children initially refused admission to a school, but subsequently offered a place outside a normal admission round by direction of an admission appeal panel, or because the person responsible for making the original decision recognises that an error was made in implementing the school's admission arrangements.
- iv. Children who cannot gain a place at any other suitable school within a reasonable distance of their home because they move into the area outside a normal admission round.
- v. Children for whom education at a school which is Welsh speaking is desired where the school concerned is the only such school within a reasonable distance of their home.
- vi. Children for whom education at a school with a designated religious character is desired where the school concerned is the only such school within a reasonable distance of their home.
- vii. Pupils admitted to the school within an age group in which children are normally admitted and
 - admitted after the first day of the relevant school year, and
 - where the school has not yet reached its admission number but has already organised its classes, and
 - where admission of the child would mean that the school would have to take a relevant measure.
- viii. Children whose parent is in the armed forces and who is admitted to the school outside a normal admission round.
- ix. Children whose twin or other sibling from a multiple birth is admitted in the same age group otherwise than as an excepted pupil.
- x. Children who are registered pupils at special schools, but who receive part of their education at a mainstream school.
- xi. Children with SEN who are normally educated in a special unit in a mainstream school, but who receive some of their lessons in a mainstream class.

C.21 In the first nine of these cases, the class may only be above 30 for that school year or the remainder of that school year. Qualifying measures **must** be taken for the following year, or the class will be unlawfully large.

Annex D – Cultural differences

D.1 Appeal panels **should** bear in mind cultural differences when hearing appeals. Six key points are:

- Language which may cause offence **should never** be used when speaking about people from different ethnic backgrounds.
- Panel members **should** show that they have an understanding of names of people of different cultures (see D.3 below).
- Panel members **should** show that they understand something of the background of social and family customs of the principal ethnic communities in their area.
- Members **should** remember that there may often be communication difficulties even when the appellant's main language appears to be English or Welsh. Special care **should** be taken in hearings involving interpreters.
- When trying to assess the strength of an appellant's case, members **should** be alert to the possibility that their body language may be different if they come from a different background e.g. in certain cultures, it is thought impertinent to look figures of authority in the eye. This **should not** be taken to mean that the appellant is avoiding the question.
- Panel members **should never** make sweeping or potentially offensive statements about people from a particular community.

(Abridged from an article written by Mr Justice Henry Brooke and published in 'The Magistrate' December 1992).

D.2 Above all, appeal panels **must** ensure that their decision does not racially discriminate against an appellant and they **must** have regard to the [Race Relations Act 1976](#) (as amended).

Names and naming systems

D.3 It is important that appeal panels address appellants orally and in writing in such a way so as not to cause confusion or offence. [The Equal Treatment Benchbook](#) published in September 2005 by the Judicial Studies Board provides some basic explanations of certain minority ethnic community naming systems, for example:

South Asian naming systems

Hindu personal name + middle name + family name

e.g. Vijay Lal Sharma and Jyoti Devi Chopra should be addressed as Mr Sharma and Mrs Chopra.

Sikh male: personal name + Singh (+ family name)
female: personal name + Kaur (+ family name)

Annex E – Further material (Information correct at time of publication)

- The text of all Acts of Parliament from 1988, Measures of the National Assembly for Wales and all Statutory Instruments (Regulations) from 1987 are available on the Legislation website at: www.legislation.gov.uk

The Office for Public Sector information does not sell publications but printed versions of an Act, Statutory Instrument or any other official publication can be obtained via the Stationary Office's website at: www.tso.co.uk

- The School Admissions Code can be obtained from:

Schools Management and Effectiveness Division
Department for Education and Skills
Welsh Government
Cathays Park
Cardiff CF10 3NQ
Telephone no.: 029 2082 6562
Fax no.: 029 2028 6109
Email address: SchoolsManagementDivision3@wales.gsi.gov.uk

- The Administrative Justice and Tribunals Council publishes the '[Framework of Standards for Tribunals](#)', which sets out the key issues the Council is concerned with in keeping under review the constitution and working of the tribunals under its supervision. It also publishes '[Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act](#)'. These are available from:

Administrative Justice and Tribunals Council
81 Chancery Lane
London, WC2A 1BQ
Telephone no.: 020 7855 5200
Website: www.ajtc.gov.uk

- The Judicial Studies Board has an advisory role in the training of chairpersons and members of panels. It has also published a useful guide on fairness in Courts and Tribunals which can be found on its website.

Judicial Studies Board
9th Floor, Millbank Tower
Millbank
London, SD1P 4QU
Telephone no.: 020 7217 4763
Website: www.jsboard.co.uk

- The Equality and Human Rights Commission is able to give advice on the [Equality Act 2010](#) and provides information and advice to people who think they have suffered racial discrimination or harassment:

Equality and Human Rights Commission Helpline Wales
FREEPOST RRLR-UEYB-UYZL
1st Floor
3 Callaghan Square
Cardiff CF10 5BT
Telephone no.: 0845 604 8810
Textphone no.: 0845 604 8820
Website: www.equalityhumanrights.com

Glossary

Admission authority

The body responsible for setting and applying a school's admission arrangements. For community or voluntary controlled schools, the LA is the admission authority, unless the function has been delegated to the governing body; and for foundation or voluntary aided schools, the governing body of the school is the admission authority.

Admission number

The number of school places that the admission authority **must** offer in each relevant age group of a school for which it is the admission authority. Admission numbers are part of a school's admission arrangements, and **must** be consulted upon with the rest of a school's admission arrangements and be published with those arrangements in the school's prospectus and the LA composite prospectus.

Appeal panel

The people responsible for considering appeals against decisions not to admit a child or young person to a school. They are totally independent of the LA. Any decision taken by an appeal panel is final and binding on the relevant admission authority.

Appellant

The young person or parent who is appealing against non-admission to a school.

Complaints

The Welsh Ministers can consider complaints about the actions of a governing body or LA in Wales. Under sections 496, 497 and 497A of the [Education Act 1996](#), they are able to issue a direction to a governing body or LA if they are failing in their statutory duties under the Education Acts, behaving unreasonably in relation to the exercise of those powers and duties, or in the case of section 497A, where an LA is failing to perform its functions to an adequate standard.

Infant class size limit

The [1998 Act](#) requires children aged 5, 6, and 7 to be taught in classes of no more than 30 per school teacher.

Normal year of entry

The point at which pupils are normally admitted to school for example, reception or year 7.

Oversubscription criteria

The list of criteria an admission authority **must** adopt for its school(s) which are used only when the school is oversubscribed to assess which children will be offered a place. Once determined, admissions criteria, including the admission number, must be published by the school and in the LA composite prospectus at least 6 weeks before parents or young people express their preferences.

Parent

Any person who has parental responsibility or care for the child or young person.

Relevant age group

The age group to which children are normally admitted. Each relevant age group must have admission arrangements, including an admission number attached. Some schools (for example schools with a sixth form which admit children into the sixth form) have more than one relevant age group.

School day

School day is defined in section 579 of the [Education Act 1996](#) as follows: "school day", in relation to a school, means any day on which at that school there is a school session". A school session can be a morning session or an afternoon session, so a school day is any day when the school meets for all or part of the day.

Twice excluded

A child who has been permanently excluded from two or more schools.

Young person

A child who is seeking admission to a sixth form or a transfer from year 11 to year 12 at their current school.

**Section 2A: Explanatory
memorandum to the school
admission appeals code**

Explanatory memorandum to the school admission appeals code

This Explanatory Memorandum has been prepared by the Department for Education and Skills and will be laid before the National Assembly for Wales.

Description

The Code on School Admission Appeals contains practical guidance and imposes requirements in respect of the discharge by local authorities (LAs), the governing bodies of maintained schools, admission appeal panels and admissions forums of their admission appeal functions under the School Standards and Framework Act 1998 (the 1998 Act). The Code includes guidelines setting out the aims, objectives and other matters relating to the discharge of appeal functions and each of the bodies or persons covered must act in accordance with the Code. The Code replaces the Welsh Assembly Government's School Admission Appeals Code which was published in July 2009 (the 2009 Code).

Legislative Background

The powers allowing the making of this Code are contained in Section 84 and 85 of the 1998 Act (as amended by Section 40 of the Education and Inspections Act 2006 (the 2006 Act)). These powers have been transferred to the Welsh Ministers by the virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Section 84 of the 1998 Act permits the Welsh Ministers to issue a revised Code on school admission appeals as appropriate. Section 85 of the 1998 Act lays down the procedure to be followed when a revised Code under Section 84 is prepared. Welsh Ministers must first consult on the draft Code and then follow the negative resolution procedure.

Purpose and intended effect of the legislation

The revised Code is intended to provide greater clarity than the 2009 Code and to provide new guidance on issues which have arisen in the intervening period. Strengthening the new Code should make it easier for everyone with an interest in school admission appeals to fulfil their duties correctly and clarification of the guidance should improve practice on the ground. The main changes introduced by the Code are:

- List of matters to be considered by appeal panels and those that should not be considered. There is anecdotal evidence that some appeals panels are giving weight to matters that should not be considered as part of the appeal process.
- More guidance on the differences between lay people and lay people with educational experience (to assist in the constitution of appeals panels).
- More detailed glossary and index.

Implementation

It is intended that the Code will be made in 2013 [date to be decided] and come into force in 2014/15.

Consultation

The Code is being consulted on together with the Code on School Admissions.

Regulatory Impact Assessment

As this Code is not a statutory instrument a Regulatory Impact Assessment is not required.

Annex A: Related documents

- Adoption and Children Act 2002
- Children Act 1989
- Code of Practice for Children with Special Educational Needs
- Council of Civil Service unions v Minister for the Civil Service [1984] 3 All ER 935
- Data Protection Act 1998
- Designation of Schools Having a Religious Character (Wales) Order 2007
- Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2009
- Education (Admission Appeals Arrangements) (Wales) (Amendment No. 2) Regulations 2009
- Education (Admission Appeals Arrangements) (Wales) Regulations 2005
- Education (Admission Forums) (Wales) Regulations 2003
- Education (Admission of Looked After Children) (Wales) Regulations 2009
- Education (Determination of Admission Arrangements) (Wales) Regulations 2006
- Education (Infant Class Size) (Wales) (Amendment) Regulations 2009
- Education (Infant Class Size) (Wales) Regulations 1998
- Education (Objections to Admission Arrangements) (Wales) Regulations 2006
- Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999
- Education (School Teachers Qualifications) (Wales) Regulations 2004
- Education (Variation of Admission Arrangements) (Wales) Regulations 2006
- Education Act 1996
- Education Act 2002
- Education and Inspections Act 2006
- Education and Skills Act 2008
- Equal Treatment Benchbook
- Equality Act 2010
- Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010
- Framework Standards for Tribunals
- Freedom of Information Act 2000
- Government of Maintained Schools (Wales) Regulations 2005
- Guidance for Governing Bodies on School Uniform and Appearance Policies – Welsh Government Circular No: 15/2011
- Human Rights Act 1998
- Learner Travel Operational Guidance, Welsh Assembly Government, April 2009
- Learner Travel (Wales) Measure 2008
- Local Authorities (Allowances for Members) (Wales) Regulations 2007
- Local Government Act 1972
- Local Government Act 1974
- Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act
- Measuring the Capacity of Schools in Wales - Welsh Government Circular No: 021/2011

- Moving Forward - Gypsy Traveller Education – Welsh Assembly Government Circular 003/2008
- New School (Admissions) (Wales) Regulations 2006
- Parents and Parental Responsibility National Assembly for Wales Circular No 12:2007
- Placement of Children (Wales) Regulations 2007
- R (on the application of South Gloucestershire Local Education Authority) v South Gloucestershire Schools Appeal Panel [2001] EWHC Admin 732
- R (ota I) v Independent Appeals Panel for G Technical College [2005] EWHC 558 (Admin)
- R (ota K and S) v Admission Appeals Panel of Cardiff County Council and Cardiff County Council [2003] EWHC 436 (Admin)
- R (ota I) v The Independent Appeal Panel of St Edward's College [2001] ELR 542
- R v Birmingham City Council Education Appeals Committee ex parte B [1999] ELR305
- R v London Borough of Richmond ex parte JC [2001] ELR21, CA
- R v Rotherham Metropolitan Council ex parte Clark and others (1997) EWCA Civ 2768
- Race Relations Act 1976
- Rights of Children and Young Persons (Wales) Measure 2011
- School Admission Appeals Code
- School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow [2002] EWCA Civ 900
- School Admissions Code
- School Information (Wales) Regulations 2011
- School Standards and Framework Act 1998
- School Standards and Organisation Act 2013
- St Edward's College and R (ota C) v the Appeals Panel of Nottinghamshire County Council and Nottinghamshire County Council [2004] EWHC 2988 (Admin)
- The Freedom of Information Act 2000
- The Magistrate, December 1992
- The School Information (Wales) Regulations 2011
- Towards a Stable Life and a Brighter Future
- Tribunals and Inquiries Act 1992
- Tribunals, Courts and Enforcement Act 2007
- United Nations Convention on the Rights of the Child (UNCRC)

Annex B: List of schools consulted

- Ysgol Gynradd Esceifiog
- Ysgol Gymuned Llanfechell
- Ysgol Gynradd Rhosneigr
- Ysgol Y Borth
- Ysgol Gynradd Nefyn
- Ysgol Gynradd Carmel
- Ysgol Bro Plenydd
- Ysgol Babanod Morfa Nefyn
- Ysgol Eifion Wyn
- Ysgol Y Garnedd
- Ysgol Dinas Mawddwy
- Ysgol Gynradd Llwyngwriol
- Ysgol Ieuan Gwynedd
- Ysgol Maelgwn
- Ysgol Trefriw
- Ysgol Gynradd Rhydgaled
- Ysgol Cynfran
- Ysgol Dewi Sant
- Ysgol Twm o'r Nant
- Ysgol Caer Drewyn
- Ysgol Bro Cinmeirch
- Ysgol Bryn Garth
- Ysgol Glanrafon
- Ysgol Terrig
- Hawarden C.P. Infants
- Drury C.P. School
- Broughton Primary School
- Ysgol Llanarmon Dyffryn Ceiriog
- Brynteg C.P. School
- Wat's Dyke C.P. School
- Ysgol Heulfan
- Berriew C.P. School
- Ysgol Meifod
- Brynhafren C.P. School
- Franksbridge C.P. School
- Ysgol Dolafon
- Caehopkin C.P. School
- Bronllys C.P. School
- Ysgol Gynradd Dihewyd
- Y.G. Llangynfelyn
- Ysgol Gynradd Talybont
- Y.G. Glynarthen
- Ysgol Gynradd Tregaron
- Ysgol Rhos Y Wlad
- Ysgol Gymunedol Croesgoch
- Ysgol y Frenni
- Ysgol Gynradd Y Tymbl
- Bancyfelin C.P. School
- Talley C.P. School
- Ysgol Gynradd Hendy Gwyn Ar Daf
- Ysgol Gynradd Pum Heol
- Ysgol Gymraeg Brynsierfel
- Ysgol Beca
- Ysgol Y Castell
- Richmond Park Primary School
- Ysgol Bro Banw
- Cwmbwrla Primary School
- Oystermouth Primary School
- Ynystawe Primary School
- Hendrefoilan Primary School
- Gorseinon Junior School
- Pontlliw Primary School
- Ysgol G G Y Login Fach
- Gowerton Primary School
- Blaendulais Primary School
- Creunant Primary School
- Gnoll Primary School
- Sandfields Primary School
- Traethmelyn Primary School
- YGG Cwm Nedd
- Coed Hirwaun Primary School
- Betws Primary School
- Llangynwyd Primary School
- Trelales Primary School
- West Park Primary School
- Brackla Primary School
- Barry Island Primary
- Llanfair Primary School
- Evenlode Primary School
- Cadoxton Primary School
- Caegarw Primary School
- Ffynnon Taf Primary School
- Cwmbach Infants School
- Parc Primary School
- Pontrhondda Primary School
- Craig Yr Hesg Primary School
- Ysgol Gymraeg Garth Olwg
- Ysgol G.G. Ynyswen

- Ysgol G.G. Bronllwyn
- Ysgol Yr Eos
- Llanishen High School
- Johnston C.P. School
- Ysgol Llandudoch
- Ysgol G G Santes Tudful
- Goetre Primary School
- Pontllanfraith Primary School
- Gilfach Fargoed Primary School
- Ty Isaf Infants School
- Ysgol Y Lawnt
- Hendredenny Park Primary School
- Penllwyn Primary School
- Ysgol Bro Sannan
- Glanhwy Primary School
- Cwm Primary School
- St Illtyd's Primary School
- Llanyrafon Primary School
- Woodlands Primary School
- Pembroke Primary School
- Cross Ash C.P. School
- Gaer Junior School
- Glasllwch C.P. School
- Rogerstone Primary School
- Monnow Primary School
- Baden Powell Primary School
- Roath Park Primary School
- Pentrebane Primary School
- Bryn Celyn Primary School
- Ysgol Bro Eirwg
- Ysgol Y Berllen Deg
- Windsor Clive Primary School
- Glyncoed Primary School
- Ysgol Dyffryn Nantlle
- Ysgol Glan Y Mor
- Ysgol Uwchradd Glan Clwyd
- St David's High School
- Ysgol Bryn Alyn
- Ysgol Bro Ddyfi
- Ysgol Gyfun Llanbedr Pont Steffan
- Pembroke School
- Glan-y-Mor School
- Olchfa School
- Dylan Thomas Community School
- Cwmtawe Community School
- Porthcawl Comprehensive School
- Ferndale Community School
- Risca Comprehensive School
- Tredegar Comprehensive School
- Bassaleg School